101ST CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 101-54,
Part 2

FINANCIAL INSTITUTIONS REFORM, RECOVERY AND ENFORCEMENT ACT OF 1989

REPORT

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

together with

ADDITIONAL VIEWS

[Including cost estimate of the Congressional Budget Office]

MAY 22, 1989.—Ordered to be printed

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FINANCIAL INSTITUTIONS REFORM, RECOVERY AND ENFORCEMENT ACT OF 1989

MAY 22, 1989.—Ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 1278]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 1278) to reform, recapitalize, and consolidate the Federal deposit insurance system, to enhance the regulatory and enforcement powers of Federal financial institutions regulatory agencies, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the bill as reported by the Committee on Banking, Finance and Urban Affairs) are as follows:

Amendment number 1:

At the end of the bill, add the following new title.

TITLE XIV—TAX PROVISIONS

SEC. 1401. EARLY TERMINATION OF SPECIAL REORGANIZATION RULES FOR FINANCIAL INSTITUTIONS.

(a) GENERAL RULE.—

(1) REORGANIZATIONS.—Subparagraph (D) of section 368(a)(3) of the Internal Revenue Code of 1986 (as amended by section 4012 of the Technical and Miscel-

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laneous Revenue Act of 1988) is amended to read as follows:

"(D) AGENCY RECEIVERSHIP PROCEEDINGS WHICH INVOLVE FINANCIAL INSTITUTIONS.—For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution referred to in section 581 or 591, the agency shall be treated as a court."

(2) NET OPERATING LOSS RULES.—The last sentence of section 382(l)(5)(F) of such Code (as so amended) is amended by striking "after December 31, 1989" and inserting "on or after May 10, 1989".

(3) FINANCIAL ASSISTANCE.—

(A) Section 597 of such Code (as so amended) is amended to read as follows:

"SEC. 597. TREATMENT OF TRANSACTIONS IN WHICH FEDERAL FINANCIAL ASSISTANCE PROVIDED.

"(a) GENERAL RULE.—The treatment for purposes of this chapter of any transaction in which Federal financial assistance is provided with respect to a bank or domestic building and loan association shall be determined under regulations prescribed by the Secretary.

"(b) PRINCIPLES USED IN PRESCRIBING REGULATIONS.—

"(1) TREATMENT OF TAXABLE ASSET ACQUISITIONS.—In the case of any acquisition of assets to which section 381(a) does not apply, the regulations prescribed under subsection (a) shall—

"(A) provide that Federal financial assistance shall be properly taken into account by the institution from which the assets were acquired, and

"(B) provide the proper method of allocating basis among the assets so acquired (including rights to receive Federal financial assistance).

"(2) OTHER TRANSACTIONS.—In the case of any transaction not described in paragraph (1), the regulations prescribed under subsection (a) shall provide for the proper treatment of Federal financial assistance and appropriate adjustments to basis or other tax attributes to reflect such treatment.

"(3) DENIAL OF DOUBLE BENEFIT.—No regulations prescribed under this section shall permit the utilization of any deduction (or other tax benefit) if such amount was in effect reimbursed by nontaxable Federal financial assistance.

"(c) FEDERAL FINANCIAL ASSISTANCE.—The purposes of this section, the term 'Federal financial assistance' means—

"(1) any money or other property provided with respect to a domestic building and loan association by the Federal Savings and Loan Insurance Corporation or the Resolution Trust Corporation pursuant to section 406(f) of the National Housing Act or section 21A

of the Federal Home Loan Bank Act (or under any other similar provision of law), and

"(2) any money or other property provided with respect to a bank or domestic building and loan association by the Federal Deposit Insurance Corporation pursuant to sections 13(c), 15(c)(1), and 15(c)(2) of the Federal Deposit Insurance Act (or under any other similar provision of law),

regardless of whether any note or other instrument is issued in exchange therefor.

"(d) DOMESTIC BUILDING AND LOAN ASSOCIATION.—For purposes of this section, the term 'domestic building and loan association' has the meaning given such term by section 7701(a)(19) without regard to subparagraph (C) thereof."

(B) Subparagraph (B) of section 904(c)(2) of the Tax Reform Act of 1986 is hereby repealed.

(C) The table of sections for part II of subchapter H of chapter 1 of such Code is amended by striking the item relating to section 597 and inserting the following:

"Sec. 597. Treatment of transactions in which Federal financial assistance provided."

(b) TECHNICAL AMENDMENTS.—

(1) Section 904 of the Tax Reform Act of 1986 (other than subsection (c)(2)(B) thereof) is hereby repealed and the Internal Revenue Code of 1986 shall be applied as if the amendments made by such section had not been enacted.

(2) The last sentence of paragraph (3) of section 4012(c) of the Technical and Miscellaneous Revenue Act of 1988 is amended to read as follows:

"In the case of any bank or any institution treated as a domestic building and loan association for purposes of section 597 of the 1986 Code by reason of the amendment made by subsection (b)(2)(B), the amendments made by this subsection shall also apply to any transfer before January 1, 1989, to which the amendments made by subsection (b)(2) apply."

(3) The last sentence of section 593(e)(1) of such Code is amended to read as follows: "This paragraph shall not apply to any transaction to which section 381 applies, or to any distribution to the Federal Savings and Loan Insurance Corporation (or any successor thereof) or the Federal Deposit Insurance Corporation in redemption of an interest in an association, if such interest was originally received by any such entity in exchange for assistance provided under a provision of law referred to in section 597(c).".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a)(1).—The amendment made by subsection (a)(1) shall apply to acquisitions on or after May 10, 1989.

(2) SUBSECTION (a)(2).—The amendment made by subsection (a)(2) shall apply to transactions on or after May 10, 1989.

(3) SUBSECTION (a)(3).—

(A) IN GENERAL.—The amendments made by subsection (a)(3) shall apply to any amount received or accrued by the financial institution on or after May 10, 1989, except that such amendments shall not apply to transfers on or after such date pursuant to an acquisition to which the amendment made by subsection (a)(1) does not apply.

(B) INTERIM RULE.—In the case of any payment pursuant to a transaction on or after May 10, 1989, and before the date on which the Secretary of the Treasury (or his delegate) takes action in exercise of his regulatory authority under section 597 of the Internal Revenue Code of 1986 (as amended by subsection (a)(3)), the taxpayer may rely on the legislative history for the amendments made by subsection (a)(3) in determining the proper treatment of such payment.

(4) SUBSECTION (b)(1).—The provisions of subsection (b)(1) shall take effect on the date of the enactment of the Tax Reform Act of 1986.

(5) SUBSECTION (b)(2).—The amendment made by subsection (b)(2) shall take effect on the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988.

(6) SUBSECTION (b)(3).—The amendment made by subsection (b)(3) shall take effect on the date of the enactment of this Act.

(7) CLARIFICATION OF PRIOR LAW.—Any reference to the Federal Savings and Loan Insurance Corporation in section 597 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) shall be treated as including a reference to the Resolution Trust Corporation and the FSLIC Resolution Fund.

SEC. 1402. TAX EXEMPTION FOR RESOLUTION TRUST CORPORATION AND RESOLUTION FUNDING CORPORATION.

(a) GENERAL RULE.—Subsection (l) of section 501 of the Internal Revenue Code of 1986 (relating to government corporations exempt under subsection (c)(1)) is amended to read as follows:

"(l) GOVERNMENT CORPORATIONS EXEMPT UNDER SUBSECTION (c)(1).—For purposes of subsection (c)(1), the following organizations are described in this subsection:

"(1) The Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).

"(2) The Resolution Trust Corporation established under section 21A of the Federal Home Loan Bank Act.

"(3) The Resolution Funding Corporation established under section 21B of the Federal Home Loan Bank Act."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 1403. ANNUAL REPORTS ON TRANSACTIONS IN WHICH FEDERAL FINANCIAL ASSISTANCE PROVIDED.

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall submit annual reports to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on—

(1)(A) the transactions which occur during the year for which the report is made and with respect to which Federal financial assistance is provided;

(B) the aggregate amount of Federal financial assistance provided with respect to such transactions; and

(C) any tax benefits available by reason of such transactions; and

(2) the aggregate amount of Federal financial assistance provided during such year, and the aggregate tax benefits utilized during such year, which are attributable to such transactions in prior years.

(b) DEFINITION.—For purposes of this section, the term "Federal financial assistance" means any assistance to which section 597 of the Internal Revenue Code of 1986 applies.

SEC. 1404. ANNUAL STUDY OF RELATIONSHIP BETWEEN PUBLIC DEBT AND ACTIVITIES OF GOVERNMENT-SPONSORED ENTERPRISES.

(a) IN GENERAL.—In order to better manage the bonded indebtedness of the United States, the Secretary of the Treasury shall annually conduct a study to assess the financial safety and soundness of the activities of all Government-sponsored enterprises and the impact of their operations on Federal borrowing.

(b) ACCESS TO RELEVANT INFORMATION.—

(1) INFORMATION FROM GSE'S.—Each Government-sponsored enterprise shall provide full and prompt access to the Secretary to its books and records, and shall promptly provide any other information requested by the Secretary.

(2) INFORMATION FROM SUPERVISORY AGENCIES.—In conducting the study under this section, the Secretary may request information from, or the assistance of, any Federal department or agency authorized by law to supervise the activities of any Government-sponsored enterprise.

(c) ASSESSMENT OF RISK.—In assessing the financial safety and soundness of the activities of Government-spon-

sored enterprises, and the impact of their activities on Federal borrowing, the Secretary shall quantify the risks associated with each Government-sponsored enterprise. In quantifying such risks, the Secretary shall determine the volume and type of securities outstanding which are issued or guaranteed by each Government-sponsored enterprise, the capitalization of each Government-sponsored enterprise, and the degree of risk involved in the operations of each Government-sponsored enterprise due to factors such as credit risk, interest rate risk, management and operations risk, and business risk. The Secretary shall also report on the quality and timeliness of information currently available to the public and the Federal Government concerning the extent and nature of the activities of Government-sponsored enterprises and the financial risk associated with such activities.

(d) REPORT TO CONGRESS.—Not later than March 1 of each year, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report setting forth the results of the study conducted under this section.

(e) DEFINITIONS.—For purposes of this section:

(1) GOVERNMENT-SPONSORED ENTERPRISE.—The term "Government-sponsored enterprise" means—

(A) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank System, the Farm Credit Banks, the Banks for Cooperatives, the Federal Agricultural Mortgage Corporation, the Student Loan Marketing Association, the College Construction Loan Insurance Association, and any of their affiliated or member institutions; and

(B) any other Government-sponsored enterprise, as designated by the Secretary.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

Page 7, after the item relating to section 1302 in the table of contents, insert the following new items:

TITLE XIV—TAX PROVISIONS

Sec. 1401. Early termination of special reorganization rules for financial institutions.
Sec. 1402. Tax exemption for Resolution Trust Corporation and Resolution Funding Corporation.
Sec. 1403. Annual reports on transactions in which Federal financial assistance provided.
Sec. 1404. Annual study of relationship between public debt and activities of Government-sponsored enterprises.

Page 181, strike lines 5 through 16 and insert the following:

Section 15 of the Federal Deposit Insurance Act (12 U.S.C. 1825) is amended—

(1) by inserting "(a) GENERAL RULE.—" before "All"; and

(2) by adding at the end the following new subsections:

Page 181, strike line 25 and all that follows through page 182, line 2, and insert the following:

any State, county, municipality, or local taxing authority, except that any real

Page 182, after line 20, insert the following:

This subsection shall not apply with respect to any tax imposed (or other amount arising) under the Internal Revenue Code of 1986.

Page 338, strike lines 4 through 10 and insert the following:

"(m) EXEMPTION FROM STATE AND LOCAL TAXATION.—The Corporation, the capital, reserves, surplus, and assets of the Corporation, and the income derived from such capital, reserves, surplus, or assets, shall be exempt from State, municipal, and local taxation except taxes on real estate held by the Resolution Trust Corporation, according to its value as other similar property held by other persons is taxed.

Page 389, line 23, strike "sections 13 and 23" and insert the following:

section 13 (to the extent such section relates to State, municipal, and local taxation) and section 23

Amendment number 2:

Page 378, strike line 9 and all that follows through page 379, line 17, and insert the following:

"(9) AGGREGATE ANNUAL CAPITAL CONTRIBUTION OF FEDERAL HOME LOAN BANKS.—

"(A) AMOUNT REQUIRED.—The sum of the amounts subject to paragraph (3)(B) that are invested by the Federal home loan banks under paragraph (1) shall, for each calendar year for which paragraph (3)(B) applies, equal—

"(i) $300,000,000, in the case of a calendar year before 1993; or

"(ii) the adjusted dollar amount determined under subparagraph (B), in the case of a calendar year after 1992.

"(B) ADJUSTMENT DOLLAR AMOUNT FOR YEARS AFTER 1992.—

"(i) IN GENERAL.—The adjusted dollar amount under subparagraph (A)(ii) for any calendar year shall be the sum of—

"(I) $300,000,000; and

"(II) an amount equal to $300,000,000 multiplied by the inflation adjustment determined under clause (ii).

"(ii) INFLATION ADJUSTMENT.—For purposes of clause (i), the inflation adjustment of any

calendar year is the percentage (if any) by which—

"(I) the consumer price index for the preceding calendar year; exceeds

"(II) the consumer price index for calendar year 1991.

"(iii) CONSUMER PRICE INDEX.—For purposes of clause (ii), the consumer price index for any calendar year is the average, as of the close of such year, of the last consumer price index for all-urban consumers published by the Department of Labor.

Page 382, strike lines 1 and 2 and insert the following:

"(i) an aggregate annual amount equal to—

"(I) $300,000,000, in the case of a calendar year before 1993; or

"(II) the adjusted dollar amount determined under subsection (e)(9)(B), in the case of a calendar year after 1992; minus

Amendment number 3:

Page 363, strike line 5 and all that follows through page 395, line 2, and insert the following:

SEC. 502. RESOLUTION FUNDING CORPORATION ESTABLISHED.

(a) IN GENERAL.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by inserting after section 21A (as added by section 501 of this title) the following new section:

"SEC. 21B. RESOLUTION FUNDING CORPORATION ESTABLISHED.

"(a) STATEMENT OF PURPOSE.—It is the purpose of this section to establish a Resolution Funding Corporation to provide the funds necessary for the Resolution Trust Corporation to carry out its purposes under this Act.

"(b) ESTABLISHMENT.—There is hereby created a body corporate to be known as the Resolution Funding Corporation. The Funding Corporation shall be an instrumentality of the Federal Government and shall maintain any offices necessary or appropriate in the conduct of its business.

"(c) MANAGEMENT.—

"(1) IN GENERAL.—The Funding Corporation shall be subject to the general supervision and direction of the Secretary of the Treasury.

"(2) STAFF.—The Funding Corporation shall have no paid employees. The Secretary may, on a reimbursable basis, authorize the officers or employees of the Department of the Treasury to act for and on behalf of the Funding Corporation in the manner necessary to carry out the functions of the Funding Corporation.

"(3) ADMINISTRATIVE EXPENSES AND ISSUANCE COSTS.—

"(A) IN GENERAL.—All administrative expenses and issuance costs of the Funding Corporation shall be paid by the Federal home loan banks.

"(B) PRO RATA DISTRIBUTION.—The amount each Federal home loan bank shall pay shall be determined by the Secretary by multiplying the total administrative expenses and issuance costs for any period by the percentage arrived at by dividing—

"(i) the aggregate amount the Secretary required the bank to pay to the Funding Corporation (as of the time of such determination) under paragraphs (3) and (4) of subsection (e) (as computed without regard to paragraphs (2) or (5) of such subsection); by

"(ii) the aggregate amount the Secretary required all Federal home loan banks to pay (as of the time of such determination) under such paragraphs.

"(d) POWERS.—The Funding Corporation shall have only the following powers, subject to the other provisions of this section and any regulations issued by the Secretary:

"(1) REQUIRE PAYMENTS.—To take such actions as may be necessary to collect amounts required to be paid to the Funding Corporation in this section.

"(2) TRANSFER FUNDS.—To transfer funds to the Resolution Trust Corporation.

"(3) ISSUE OBLIGATIONS.—To issue debentures, bonds, or other obligations to the Secretary and to pay interest on (and any redemption premium with respect to) any such obligation.

"(4) IMPOSE ASSESSMENTS.—To impose assessments in accordance with subsection (e)(6).

"(5) CORPORATE SEAL.—To adopt, alter, and use a corporate seal.

"(6) SUCCESSION.—To have succession until dissolved.

"(7) CONTRACTS.—To enter into contracts.

"(8) AUTHORITY TO SUE.—To sue and be sued in its corporate capacity, and to complain and defend in any action brought by or against the Funding Corporation in any State or Federal court of competent jurisdiction.

"(9) INCIDENTAL POWERS.—To exercise incidental powers which are not inconsistent with this section and are necessary or appropriate to carry out this section.

"(e) PAYMENTS BY FEDERAL HOME LOAN BANKS AND OTHERS FOR FUNDING CORPORATION PRINCIPAL FUND.—

"(1) IN GENERAL.—

"(A) TOTAL AMOUNT REQUIRED.—The Secretary shall ensure that the aggregate of the amounts obtained under this subsection shall be sufficient to permit the total of the face amounts (the amount of principal payable at maturity) of noninterest bearing instruments in the Funding Corporation Principal Fund to be equal to the aggregate

amount of principal on the obligations of the Funding Corporation.

"(B) PAYMENTS BY FEDERAL HOME LOAN BANKS.—Each Federal home loan bank shall make payments to the Funding Corporation for the Funding Corporation Principal Fund at times and in amounts prescribed by the Secretary.

"(2) MAXIMUM PAYMENT LIMITATION FOR EACH FEDERAL HOME LOAN BANK.—The cumulative amount of funds paid to the Funding Corporation by each Federal home loan bank under paragraph (1) shall not exceed the aggregate amount of—

"(A) the sum of—

"(i) the reserves maintained by the bank on December 31, 1988, pursuant to the reserve requirements contained in section 16 (as in effect on such date); and

"(ii) the undivided profits of the bank on such date; minus

"(iii) the amounts used as of such date to invest in the capital stock of the Financing Corporation pursuant to the requirement contained in section 21; and

"(B) for the period beginning on January 1, 1989, and ending on the later of December 31, 1991, or such date as may be necessary to fund the Funding Corporation Principal Fund pursuant to subsection (g), an aggregate amount equal to—

"(i) the sum of—

"(I) the amounts added to reserves after December 31, 1988, pursuant to the reserve requirements contained in section 16; and

"(II) the undivided profits of the bank accruing after December 31, 1988; minus

"(ii) the amounts used to invest in the capital stock of the Financing Corporation after December 31, 1988, pursuant to the requirement contained in section 21.

"(3) PRO RATA DISTRIBUTION OF FIRST $1,000,000,000 PAID TO FUNDING CORPORATION BY FEDERAL HOME LOAN BANKS.—With respect to the first $1,000,000,000 of the aggregate which the Chairperson of the directorate of the Financing Corporation pursuant to section 21 or the Secretary under this section (as the case may be) may require the Federal home loan banks to invest in the capital stock of the Financing Corporation under section 21(d) or pay to the Funding Corporation under this subsection, respectively, the amount which each Federal home loan bank (or any successor to the bank) shall invest or pay shall be determined by the Chairperson or the Secretary (as the case may be) by applying to the aggregate amount of such investment or

payment by all banks the percentage appearing in the following table for each such bank:

Bank:	*Percentage*
Federal Home Loan Bank of Boston	1.8629
Federal Home Loan Bank of New York	9.1006
Federal Home Loan Bank of Pittsburgh	4.2702
Federal Home Loan Bank of Atlanta	14.4007
Federal Home Loan Bank of Cincinnati	8.2653
Federal Home Loan Bank of Indianapolis	5.2863
Federal Home Loan Bank of Chicago	9.6886
Federal Home Loan Bank of Des Moines	6.9301
Federal Home Loan Bank of Dallas	8.8181
Federal Home Loan Bank of Topeka	5.2706
Federal Home Loan Bank of San Francisco	19.9644
Federal Home Loan Bank of Seattle	6.1422

"(4) PRO RATA DISTRIBUTION OF AMOUNTS REQUIRED TO BE PAID IN EXCESS OF $1,000,000,000.—With respect to any amount in excess of the $1,000,000,000 amount referred to in paragraph (3) which the Secretary may require the Federal home loan banks to pay to the Funding Corporation under this subsection, the amount which each Federal home loan bank (or any successor to the bank) shall pay shall be determined by the Secretary by multiplying the excess amount by the percentage arrived at by dividing—

"(A) the sum of the total assets (as of the most recent December 31) held by all Savings Association Insurance Fund members (as defined in section 7(l)(5) of the Federal Deposit Insurance Act) which are members of the bank; by

"(B) the sum of the total assets (as of such date) held by all Savings Association Insurance Fund members (as defined in section 7(l)(5) of the Federal Deposit Insurance Act) which are members of any Federal home loan bank.

"(5) SPECIAL PROVISIONS RELATING TO MAXIMUM AMOUNT LIMITATIONS.—

"(A) IN GENERAL.—If the amount any Federal home loan bank is required to pay to the Funding Corporation pursuant to a determination by the Secretary under paragraph (4) (or under subparagraph (B) of this paragraph) exceeds the maximum amount applicable with respect to the bank under paragraph (2) at the time of such determination (in this paragraph referred to as the 'excess amount')—

"(i) the Secretary shall require each remaining Federal home loan bank to pay (in addition to the amount determined under paragraph (4) for the remaining bank and subject to the maximum amount applicable with respect to the remaining bank under paragraph (2) at the time of such determination) on behalf of the bank the amount determined under subparagraph (B);

"(ii) the Secretary shall require the bank to subsequently reimburse the remaining banks in the manner described in subparagraph (C); and

"(iii) the requirements contained in subparagraphs (D) and (E) relating to the use of net earnings available for dividends shall apply to the bank until the bank has reimbursed the remaining banks for all of the excess amount.

"(B) ALLOCATION OF EXCESS AMOUNT AMONG REMAINING FEDERAL HOME LOAN BANKS.—The amount each remaining Federal home loan bank shall be required to pay under subparagraph (A)(i) is the amount determined by the Secretary by multiplying the excess amount by the percentage arrived at by dividing—

"(i) the amount paid to the Funding Corporation by the remaining bank at the time of such determination; by

"(ii) the aggregate amount of such payments made by remaining banks at such time.

"(C) REIMBURSEMENT PROCEDURE.—The bank on whose behalf a payment is made under subparagraph (A)(i) shall annually pay to each remaining bank an amount determined by the Secretary by multiplying the amount available for such payments (at the time of such determination) by the percentage determined under subparagraph (B) with respect to the remaining bank until the aggregate amount of the excess amount has been reimbursed by the bank.

"(D) LIMITATION ON DIVIDENDS.—The amount of dividends which may be paid for any year by a bank on whose behalf a payment is made under subparagraph (A)(i) shall not exceed an amount equal to 1/4 of the net earnings available for dividends of the bank for the year.

"(E) TRANSFER TO ACCOUNT FOR REIMBURSEMENTS REQUIRED.—Of the net earnings available for dividends for any year of a bank on whose behalf a payment is made under subparagraph (A)(i), the amount necessary to make the reimbursements required under subparagraph (A)(ii) shall be placed in a reserve account (established in the manner prescribed by the Secretary) the balance in which shall be available only for such reimbursements.

"(6) ADDITIONAL SOURCES.—If each Federal home loan bank has exhausted the amount applicable with respect to the bank under paragraphs (2) and (7), as calculated under paragraphs (3), (4), and (5), the amounts necessary to provide additional funding for the Funding Corporation Principal Fund shall be ob-

tained in the manner provided in the following subparagraphs (in the order in which such subparagraphs appear):

"(A) ASSESSMENTS.—The Funding Corporation, with the approval of the Board of Directors of the Federal Deposit Insurance Corporation, shall assess against each Savings Association Insurance Fund member an assessment (in the same manner as assessments are assessed against such members by the Federal Deposit Insurance Corporation pursuant to section 7 of the Federal Deposit Insurance Act) except that—

"(i) the maximum amount of the aggregate amount assessed shall be the amount of additional funds necessary to fund the Funding Corporation Principal Fund;

"(ii) the sum of—

"(I) the amount assessed under this paragraph; and

"(II) the amount assessed by the Financing Corporation under section 21;

shall not exceed the amount authorized to be assessed against Savings Association Insurance Fund members pursuant to section 7 of the Federal Deposit Insurance Act;

"(iii) the Financing Corporation shall have first priority to make the assessment; and

"(iv) the amount of the applicable assessment determined under such section 7 shall be reduced by the sum described in clause (ii) of this subparagraph.

"(B) RECEIVERSHIP PROCEEDS.—To the extent funds available pursuant to subparagraph (A) are insufficient to provide sufficient capital to fund the Funding Corporation Principal Fund, the Federal Deposit Insurance Corporation shall transfer to the Funding Corporation from the receivership proceeds of the FSLIC Resolution Fund the remaining amount of funds necessary for such purpose.

"(7) AGGREGATE ANNUAL PRINCIPAL CONTRIBUTION OF FEDERAL HOME LOAN BANKS.—

"(A) AMOUNT REQUIRED.—The sum of the amounts subject to paragraph (2)(B) that are paid by the Federal home loan banks under paragraph (1) shall, for each calendar year for which paragraph (2)(B) applies, equal—

"(i) $300,000,000, in the case of a calendar year before 1993; or

"(ii) the adjusted dollar amount determined under subparagraph (B), in the case of a calendar year after 1992.

"(B) ADJUSTMENT DOLLAR AMOUNT FOR YEARS AFTER 1992.—

"(i) IN GENERAL.—The adjusted dollar amount under subparagraph (A)(ii) for any calendar year shall be the sum of—

"(I) $300,000,000; and

"(II) an amount equal to $300,000,000 multiplied by the inflation adjustment determined under clause (ii).

"(ii) INFLATION ADJUSTMENT.—For purposes of clause (i), the inflation adjustment of any calendar year is the percentage (if any) by which—

"(I) the consumer price index for the preceding calendar year; exceeds

"(II) the consumer price index for calendar year 1991.

"(iii) CONSUMER PRICE INDEX.—For purposes of clause (ii), the consumer price index for any calendar year is the average, as of the close of such year, of the last consumer price index for all-urban consumers published by the Department of Labor.

"(f) OBLIGATIONS OF FUNDING CORPORATION.—

"(1) ISSUANCE TO SECRETARY.—

"(A) IN GENERAL.—The Funding Corporation may issue bonds, notes, debentures, and similar obligations to the Secretary, in an aggregate amount not to exceed $50,000,000,000. No obligation may be issued under this paragraph unless, at the time of issuance, the face amounts (the amount of principal payable at maturity) of noninterest bearing instruments in the Funding Corporation Principal Fund are equal to the aggregate amount of principal on the obligations of the Funding Corporation that will be outstanding following such issuance.

"(B) TERMS AND CONDITIONS OF PURCHASE.—The Secretary shall purchase each obligation issued under this paragraph upon terms and conditions established by the Secretary. Each such obligation shall bear interest at a rate determined by the Secretary, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity.

"(2) INTEREST PAYMENTS.—The Funding Corporation shall pay the interest due on (and any redemption premium with respect to) such obligations from funds obtained for such interest payments in the manner provided in the following subparagraphs (in the order in which such subparagraphs appear):

"(A) EARNINGS ON CERTAIN ASSETS.—All earnings on assets (of the Funding Corporation) which—

"(i) are described in subsection (g)(1); and

"(ii) are not invested pursuant to subsection (g)(2);

shall be used to make interest payments on Funding Corporation obligations when interest is due.

"(B) PROCEEDS OF RTC.—The Resolution Trust Corporation shall pay to the Funding Corporation—

"(i) the net proceeds received by the Resolution Trust Corporation from the liquidation of institutions under the management of the Corporation pursuant to section 21A to the extent the amount of such proceeds are determined by the Oversight Board to be in excess of the amount of funds necessary for resolution costs in the short-term period following the date of such determination; and

"(ii) any proceeds from warrants and participations of the Resolution Trust Corporation.

"(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—To the extent the funds available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, the Federal home loan banks shall pay to the Funding Corporation—

"(i) an aggregate annual amount equal to—

"(I) $300,000,000, in the case of a calendar year before 1993; or

"(II) the adjusted dollar amount determined under subsection (e)(7)(B), in the case of a calendar year after 1992; minus

"(ii) the sum of—

"(I) the aggregate amount paid by such banks to the Financing Corporation pursuant to section 21 during the year; and

"(II) the aggregate amount paid by such banks to the Funding Corporation pursuant to subsection (e) during the year;

with the individual share of each bank to be determined pursuant to the formulation and limitations of paragraphs (2) through (5) of subsection (e).

"(D) ASSETS OF RTC.—Upon the dissolution of the Resolution Trust Corporation, the net proceeds from all assets of such corporation shall be transferred to the Funding Corporation for payment of interest under this paragraph.

"(E) TREASURY BACKUP.—

"(i) IN GENERAL.—Notwithstanding any other provision of this Act, if the Secretary determines that the Funding Corporation is unable to pay the interest on any obligation issued under this subsection from the sources of funds under the preceding subparagraphs

of this paragraph, the Secretary shall pay, out of any funds appropriated for such purpose, to the Funding Corporation the additional amount due, which shall be used by the Funding Corporation to pay such interest.

"(ii) LIABILITY OF FUNDING CORPORATION.—In each such instance where the Secretary is required to make a payment under this paragraph to the Funding Corporation, the amount of the payment shall become a liability of the Funding Corporation to be repaid to the Secretary upon dissolution of the Funding Corporation (to the extent the Funding Corporation may have any remaining assets).

"(iii) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary, for fiscal year 1989 and each fiscal year thereafter, such sums as may be necessary to carry out clause (i).

"(3) PRINCIPAL PAYMENTS.—On maturity of an obligation issued under this subsection, the obligation shall be repaid by the Funding Corporation from the liquidation of noninterest bearing instruments held in the Funding Corporation Principal Fund.

"(4) PROCEEDS TO BE TRANSFERRED TO RESOLUTION TRUST CORPORATION.—Subject to terms and conditions approved by the Secretary, the proceeds of any obligation issued by the Funding Corporation shall be used to—

"(A) transfer amounts to the Resolution Trust Corporation under section 21A; or

"(B) refund any previously issued obligation the proceeds of which were transferred in the manner described in subparagraph (A).

"(g) USE AND DISPOSITION OF ASSETS OF FUNDING CORPORATION NOT TRANSFERRED TO RESOLUTION TRUST CORPORATION.—

"(1) IN GENERAL.—Subject to regulations, restrictions, and limitations prescribed by the Secretary, assets of the Funding Corporation which are not required to be transferred to the Resolution Trust Corporation under section 21A and are not needed for current interest payments shall be invested in direct obligations of the United States issued by the Secretary.

"(2) SEPARATE ACCOUNT FOR ZERO COUPON INSTRUMENTS HELD TO ENSURE PAYMENT OF PRINCIPAL.—

"(A) IN GENERAL.—The Funding Corporation shall invest amounts received pursuant to subsection (e) in, and hold in a separate account to be known as the Funding Corporation Principal Fund, noninterest bearing instruments—

"(i) which are direct obligations of the United States issued by the Secretary; and

"(ii) the total of the face amounts (the amount of principal payable at maturity) of which is approximately equal to the aggregate amount of principal on the obligations of the Funding Corporation.

"(B) PREVENTION OF DOUBLE COUNTING AGAINST PUBLIC DEBT LIMIT.—Noninterest bearing instruments purchased by the Funding Corporation under subparagraph (A) shall not be taken into account for purposes of determining compliance with the public debt limit under section 3101(b) of title 31, United States Code.

"(h) MISCELLANEOUS PROVISIONS.—

"(1) JURISDICTION AND POWER TO REMOVE.—

"(A) FEDERAL COURT JURISDICTION.—Notwithstanding any other provision of law, any civil action, suit, or proceeding to which the Funding Corporation is a party shall be deemed to arise under the laws of the United States.

"(B) REMOVAL.—The Funding Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States District Court for the District of Columbia.

"(2) IMPOSITION OF LIEN FOR FAILURE TO MAKE PAYMENTS.—

"(A) IN GENERAL.—If any entity fails to make a payment required to be paid to the Funding Corporation under this section within 10 days after demand for such payment, then there shall be a lien in favor of the Funding Corporation equal to the amount not paid upon all property and rights to property, whether real or personal, belonging to such entity.

"(B) APPLICABLE RULES.—Any amount with respect to which a lien is imposed by subparagraph (A) shall be treated as taxes due and owing the United States, and rules similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement Income Security Act of 1974 shall apply with respect to a lien imposed by subparagraph (A) and the amount with respect to such lien.

"(i) ANNUAL REPORT.—

"(1) IN GENERAL.—The Secretary shall annually submit a full report of the operations, activities, budget, receipts, and expenditures of the Funding Corporation for the preceding 12-month period.

"(2) CONTENTS.—The report required under paragraph (1) shall include—

"(A) audited statements and any information necessary to make known the financial condition and operations of the Funding Corporation in ac-

cordance with generally accepted accounting principles;

"(B) the financial operating plans and forecasts (including estimates of actual and future spending, and estimates of actual and future cash obligations) of the Funding Corporation taking into account its financial commitments, guarantees, and other contingent liabilities; and

"(C) the results of the annual audit of the financial transactions of the Funding Corporation conducted by the Comptroller General pursuant to section 9105(a) of title 31, United States Code.

"(3) SUBMISSION TO CONGRESS AND PRESIDENT.—The Secretary shall submit each annual report required under this subsection to the Congress and the President as soon as practicable after the end of the calendar year for which the report is made, but not later than June 30 of the year following such calendar year.

"(j) TERMINATION OF FUNDING CORPORATION.—

"(1) IN GENERAL.—The Funding Corporation shall be dissolved, as soon as practicable, after the maturity and full payment of all obligations issued by the Funding Corporation under this section.

"(2) AUTHORITY OF SECRETARY TO CONCLUDE AFFAIRS OF FUNDING CORPORATION.—Effective on the date of the dissolution of the Funding Corporation under paragraph (1), the Secretary may exercise on behalf of the Funding Corporation any power of the Funding Corporation which the Secretary determines to be necessary to settle and conclude the affairs of the Funding Corporation.

"(k) DEFINITIONS.—For purposes of this section:

"(1) ADMINISTRATIVE EXPENSES.—The term 'administrative expenses' does not include any interest on (and any redemption premium with respect to) any obligation of the Funding Corporation.

"(2) FUNDING CORPORATION.—The term 'Funding Corporation' means the Resolution Funding Corporation established in subsection (b).

"(3) FUNDING CORPORATION PRINCIPAL FUND.—The term 'Funding Corporation Principal Fund' means the separate account established under subsection (g)(2).

"(4) ISSUANCE COSTS.—The term 'issuance costs' means issuance fees and commissions incurred by the Secretary in connection with the issuance or servicing of any obligation under chapter 31 of title 31, United States Code, the proceeds of which are used to purchase obligations of the Funding Corporation, as determined by the Secretary in accordance with procedures established by regulation.

"(5) NET EARNINGS AVAILABLE FOR DIVIDENDS.—The term 'net earnings available for dividends' means the net earnings of a Federal home loan bank for any period as computed after reducing the amount of earn-

ings for such period by the amount required to be carried (for such period) to reserves maintained by the bank pursuant to the reserve requirements contained in section 16.

"(6) OVERSIGHT BOARD.—The term 'Oversight Board' means—

"(A) the Oversight Board of the Resolution Trust Corporation; and

"(B) after the termination of the Resolution Trust Corporation, the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, the Attorney General, the Secretary of Housing and Urban Development, and the Chairperson of the Federal Deposit Insurance Corporation.

"(7) RESERVE REQUIREMENTS CONTAINED IN SECTION 16.—The term 'reserve requirements contained in section 16' means—

"(A) with respect to the period ending on the day before the date of the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the first 2 sentences of section 16; and

"(B) with respect to the period beginning on such date of enactment, the reserve requirements contained in section 16(a).

"(8) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

"(9) UNDIVIDED PROFITS.—The term 'undivided profits' means retained earnings minus the sum of—

"(A) the portion required to be added to reserves maintained pursuant to the reserve requirements contained in section 16; and

"(B) the dollar amounts held by the respective Federal home loan banks in special dividend stabilization reserves on December 31, 1985, as determined by the table set forth in section 21(d)(7).

"(l) REGULATIONS.—The Secretary may prescribe any regulations necessary to carry out this section.".

(b) ANNUAL GAO AUDIT OF FUNDING CORPORATION.—Section 9105(a)(2) of title 31, United States Code (as amended by section 501(c) of this title) is further amended by inserting ", Resolution Funding Corporation," after "Corporation".

(c) BUDGETARY TREATMENT OF FUNDING CORPORATION.—

(1) INCLUSION IN BUDGET.—The receipts and disbursements of the Resolution Funding Corporation shall be included in—

(A) each budget of the Federal Government submitted by the President under title 31, United States Code; and

(B) each concurrent resolution on the budget considered by the Congress pursuant to title III of the Congressional Budget Act of 1974.

(2) EXCLUSION FROM CALCULATION OF DEFICIT.—

(A) IN GENERAL.—The outlays of the Resolution Trust Corporation which are attributable to the net Treasury borrowing of the Resolution Funding Corporation shall not be counted for purposes of calculating—

(i) the deficit in each budget of the Federal Government submitted by the President under title 31, United States Code, for purposes of comparison with the maximum deficit amount in section 3(7) of the Budget and Impoundment Control Act of 1974;

(ii) the deficit under section 3(6) of the Congressional Budget and Impoundment Control Act of 1974 for purposes of comparison with the maximum deficit amount in section 3(7) of the Budget and Impoundment Control Act of 1974; and

(iii) the deficit and excess deficit for purposes of sections 251 and 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(B) NET TREASURY BORROWING.—For purposes of this paragraph, the term "net Treasury borrowing" means—

(i) the principal amount of the obligations of the Resolution Funding Corporation purchased by the Secretary of the Treasury under subsection (f)(1) of section 21B of the Federal Home Loan Bank Act; minus

(ii) the funds invested by the Resolution Funding Corporation in noninterest bearing instruments under subsection (g)(2) of such section.

(C) IDENTIFICATION OF AMOUNT EXCLUDED.—The amount excluded pursuant to subparagraph (A) for any fiscal year shall be identified in—

(i) each budget of the Federal Government submitted by the President under title 31, United States Code;

(ii) each concurrent resolution on the budget considered by the Congress pursuant to title III of the Congressional Budget Act of 1974; and

(iii) each report submitted by the Director of the Office of Management and Budget or the Director of the Congressional Budget Office under section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(3) EXEMPTION FROM SEQUESTRATION.—The Resolution Funding Corporation shall be exempt from any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

Page 3, strike the item relating to section 504 in the table of contents and insert the following item:

Sec. 504. Resolution Funding Corporation as wholly owned Government corporation.

Page 319, strike lines 19 and 20.

Page 337, strike line 4 and all that follows through page 338, line 3.

Page 401, strike lines 7 through 11 and insert the following:

SEC. 504. RESOLUTION FUNDING CORPORATION AS WHOLLY OWNED GOVERNMENT CORPORATION.

Section 9101(3) of title 31, United States Code, is amended by inserting after subparagraph (N) (as added by section 505 of this title) the following new subparagraph:

"(O) the Resolution Funding Corporation.".

I. LEGISLATIVE BACKGROUND AND SUMMARY

A. Legislative Background

On February 6, 1989, President Bush announced a comprehensive plan to assist failing savings and loan institutions.

The Administration proposal was introduced in the House on March 6, 1989, as H.R. 1278, the Financial Institutions Reform, Recovery and Enforcement Act of 1989.[1] After revising the bill, on May 2, 1989, the House Committee on Banking, Housing, and Urban Affairs ordered the legislation to be reported to the full House, and reported the bill as amended to the House on May 16, 1989 (House Rept. 101-54, Pt. 1). The Committee on Ways and Means and the Committee on Judiciary received sequential referrals of the legislation on May 16, 1989, for a period ending not later than May 25, 1989.

Public hearings on financially troubled financial institutions were held by the Committee on Ways and Means on February 22, and March 9, 1989. The Committee met in executive sessions on May 9 and 10, 1989, and ordered amendments to H.R. 1278 favorably reported on May 18, 1989.

B. Summary of the Committee Amendments

The following is a summary of the committee amendments to H.R. 1278 as adopted by the Committee on Ways and Means on May 18, 1989.

TAX PROVISIONS

Early repeal of special tax rules applicable to financially-troubled thrift institutions and financially-troubled banks

The committee amendment repeals the three special tax provisions contained in the Internal Revenue Code to assist financially-troubled financial institutions, effective for all acquisitions occur-

[1] On February 22, 1989, the Administration proposal was introduced in the Senate as S. 413. After modifications were made to the proposal, the Senate Committee on Banking, Housing, and Urban Affairs reported to the full Senate a reintroduced version of the legislation, S. 774 (Sen. Rep. No. 101-19, April 13, 1989). This legislation passed the Senate as amended on April 19, 1989.

ring on or after May 10, 1989. Under present law, these provisions are scheduled to expire on January 1, 1990. The committee also directed the Department of the Treasury to promulgate regulations, as soon as possible, governing the tax treatment of assistance payments and related issues. Further, the committee prohibited the Department of the Treasury from promulgating rules that would permit taxpayers to receive duplicative benefits from the combination of tax-free assistance payments together with the deductibility of losses and expenses. In addition, the committee directed that taxpayers can rely upon the legislative history relating to the amendments regarding assistance payments until the Department of the Treasury takes action in exercise of its regulatory authority.

Clarification of the legislation applicable to financially troubled thrift institutions and financially troubled banks

The committee amendment clarifies that the reduction in tax attributes, equal to 50 percent of the amount of nontaxable financial assistance received, with respect to Federal Deposit Insurance Corporation (FDIC) transactions and certain Federal Savings and Loan Insurance Corporation transactions (involving institutions which did not meet a qualifying asset test) would be effective on the same date that the special tax rules relating to financially-troubled financial institutions were extended to such transactions (i.e., November 10, 1988, the date of enactment of The Technical and Miscellaneous Revenue Act of 1988).

Conforming changes applicable to financially troubled thrift institutions

The committee amendment conforms Code section 593(e) with H.R. 1278, to take into account the new entities established by H.R. 1278.

Tax exemption for the Resolution Funding Corporation (REFCORP) and the Resolution Trust Corporation (RTC)

The committee amendment provides an exemption from Federal income tax for the REFCORP and the RTC in the Internal Revenue Code.

Annual report on financial institution transactions in which Federal financial assistance is provided

The committee amendment requires the Department of the Treasury to submit annual reports to the House Committee on Ways and Means and the Senate Committee on Finance regarding financial institution transactions involving Federal financial assistance, the aggregate amount of assistance provided and tax benefits available resulting from such transactions, as well as the amount of Federal financial assistance and tax benefits which are attributable to transactions in prior years.

Clarifications related to the FDIC

The committee amendment clarifies that the amendment made by the Committee on Banking, Finance and Urban Affairs to H.R. 1278 retains current-law Federal tax rules with respect to the taxability of the FDIC, the taxability of obligations of the FDIC, and

the tax treatment of financial institutions for which the FDIC acts as a receiver.

Annual study of the relationship between public debt and activities of government-sponsored enterprises

The committee amendment requires the Department of the Treasury to conduct a study annually to assess the financial safety and soundness of the activities of government-sponsored enterprises and the impact of their operations on Federal borrowings, and report the result of the study to the tax-writing committees.

BUDGET PROVISIONS

On-budget treatment of the Resolution Funding Corporation (REFCORP)

The committee amendment would move REFCORP and the financing plan on-budget. The basic structure of H.R. 1278, as amended by the Committee on Banking, Finance and Urban Affairs, would be retained except for the following:

REFCORP would be established as a wholly-owned government corporation subject to the general supervision and direction of the Secretary of the Treasury. The receipts and disbursements of REFCORP would be included in the budgets submitted by the President and any budget adopted by Congress.

A larger amount of the payments from the Federal Home Loan Banks would be paid to REFCORP, as compared to the bill as reported from the Committee on Banking, Finance and Urban Affairs, because the aggregate annual limitation on Federal Home Loan Bank payments was deleted. This limitation of interest and certain principal payments would be equal to 20 percent of net earnings of Federal Home Loan Banks under the bill as reported by the Committee on Banking, Finance and Urban Affairs. In addition, the $300-million annual interest payments required from the Federal Home Loan Banks is indexed to the overall consumer price index beginning in 1993. REFCORP would assess each Savings Association Insurance Fund (SAIF) member in an identical fashion to the bill as reported from the Committee on Banking, Finance and Urban Affairs. There would be no issuance of non-voting capital stock to the Federal Home Loan Banks or purchase of capital certificates issued by the RTC. The Secretary is empowered to impose a lien on any Federal Home Loan Bank or SAIF member which does not comply with the required payment or assessment.

REFCORP would be given authority to borrow $50 billion from the Treasury. REFCORP would purchase zero coupon bonds from the Treasury to defense the principal of such borrowings. These purchases of zero coupon bonds would not be double counted against the public debt limit.

The additional outlays of the Resolution Trust Corporation (RTC), as a result of the net borrowing ($50 billion less the contributions from the Federal Home Loan Banks and the Savings Association Insurance Fund (SAIF) members), would not be

counted for purposes of calculating the deficit which is compared to the maximum deficit amounts established in the Balanced Budget and Emergency Control Reaffirmation Act of 1987. This would include the submission of the President's budget under section 1105 of Title 31, the budget resolutions considered or adopted by Congress, and the calculation of the deficit and excess deficit in sections 251 and 252 of Gramm-Rudman-Hollings (GRH). The amount excluded would be identified in each budget or report required under GRH.

The committee amendment also requires annual GAO audits of REFCORP, RTC and other entities created in the reported bill.

II. EXPLANATION OF COMMITTEE AMENDMENTS

A. Tax Provisions

1. Repeal of Special Rules Applicable to Financially Troubled Financial Institutions (new sec. 1401 of the bill and Code secs. 368(a)(3)(D), 382(1)(5)(F), and 597)

PRESENT LAW

The following three rules applicable to financially troubled financial institutions are scheduled to expire for transactions after December 31, 1989.

(1) Payments from the Federal Savings and Loan Insurance Corporation (the "FSLIC") or the Federal Deposit Insurance Corporation (the "FDIC") to a financially troubled financial institution are not included in the income of the recipient institution and such institutions need not reduce their basis in property by the amount of such financial assistance.[2] However, there may be a reduction in certain tax attributes of a financially troubled financial institution equal to 50 percent of the amount of the financial assistance (Code sec. 597).

(2) Certain FSLIC- of FDIC-assisted acquisitions involving a financially troubled financial institution may qualify as tax-free reorganizations, without regard to the requirement that the shareholders of an acquired corporation must generally maintain a meaningful ownership interest in the acquiring corporation (the "continuity of interest" requirement) in order for the reorganization to be treated as tax free (sec. 368(a)(3)(D)).

(3) The general limitations on the ability of an acquiring corporation to utilize the net operating losses, built-in losses, and excess credits of a corporation acquired in a tax-free reorganization are relaxed in the case of a tax-free acquisition of a financially troubled financial institution (sec. 382(1)(5)(F)).

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[2] The committee understands that the Internal Revenue Service takes the position that FSLIC assistance payments that are structured as yield maintenance payments are includible in the recipient's earnings and profits when accrued or received for all Federal income tax purposes. Under this inerpretation, in the case of a thrift institution which is a member of an affiliated group of corporations which files a consolidated return, yield maintenance payments received by the thrift institution increase the parent's basis in the stock of the thrift institution.

REASONS FOR CHANGE

The committee believes that the tax subsidy provided to financially troubled financial institutions through more favorable tax rules than those applicable to other taxpayers is an inefficient way to provide assistance to such institutions. In addition, indirect assistance provided through the tax system will no longer be necessary because other provisions of this bill will provide adequate assistance directly to financially troubled financial institutions.

EXPLANATION OF PROVISION

Repeal of special provisions for financially troubled financial institutions

The committee bill repeals the special tax rules applicable to financially troubled financial institutions (secs. 368(a)(3)(D), 382(1)(5)(F), and 597).

Grant of regulatory authority

The committee bill directs the Treasury Department to issue regulations providing rules for the Federal income tax treatment of transactions involving financially troubled financial institutions. The committee bill also provides principles to be used by the Treasury Department in providing such rules.[3] As to all types of transactions, the Treasury Department is not authorized to issue regulations that would permit the utilization of any deduction (or other tax benefit) which is, in effect, reimbursed by Federal financial assistance [4] that is not includible in income.[5] The committee intends that the Treasury Department provide such guidance as soon as possible. As a result, the committee understands that the Treasury Department may exercise this grant of authority through revenue rulings, revenue procedures, and other administrative pronouncements by the Internal Revenue Service, as well as by regulation. In addition, the committee expects that the Internal Revenue Service will, in appropriate cases, provide private letter rulings on specific transactions prior to any such published authority being issued.

Taxable asset acquisitions.—The committee understands that most acquisitions of financially troubled financial institutions will involve the transfer of some or all of the assets and liabilities (e.g., deposits) of the institution to a different corporate entity whose stock will be owned by investors other than those investors who owned the financially troubled financial institution. As a result of the repeal of the special rules contained in section 368(a)(3)(D), the committee expects that most such transactions will be treated as

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[3] The committee intends that this grant of regulatory authority to the Treasury Department include the authority to prescribe de minimis rules, rules of convenience, or simplified methods as the Treasury Department deems appropriate.

[4] For this purpose, Federal financial assistance means money or other property provided to a domestic building and loan association or bank (1) by the Federal Savings and Loan Insurance Corporation or the Resolution Trust Corporation pursuant to section 406(f) of the National Housing Act, section 21A of the Federal Home Loan Bank Act, or under any other similar provision of law and (2) by the Federal Deposit Insurance Corporation pursuant to sections 13(c), 15(c)(1), and 15(c)(2) of the Federal Deposit Insurance Act or under any other similar provision of law.

[5] The committee does not intend to deny a deduction for otherwise deductible expenses merely because such expenses are paid for with Federal financial assistance received in a taxable asset acquisition to which basis is allocated.

taxable asset acquisitions, because there will not be sufficient continuity of proprietary interest by the former owners of the failed institutions.[6] The committee expects the Internal Revenue Service and Treasury Department to apply general tax principles in measuring continuity of interest to transactions involving failed financial institutions.[7] Thus, for example, a continuing interest in the new institution held by depositors generally would not be sufficient to meet the required continuity of interest for qualification as a tax-free reorganization.[8]

In the case of taxable asset acquisitions (i.e., those transactions in which tax attributes do not carry over under section 381(a)), any such regulations are to provide that Federal financial assistance shall be properly taken into account by the institution from which the assets were acquired. In addition, the regulations are to provide for the proper method of allocating basis among assets acquired in the acquisition (including any rights to receive Federal financial assistance at the time of the acquisition or in the future).

Other transactions.—In the case of other transactions, the regulations to be issued by the Treasury Department are to provide for the proper treatment of Federal financial assistance and appropriate adjustments to basis or other tax attributes such that the financial institution (or a related person) not receive both tax deductions for losses and expenses and an exclusion from gross income of amounts received from the regulatory insurance agencies to reimburse the institution (or its successors) for such losses and expenses.

Interim rules for taxable asset acquisitions

In order to provide immediate and temporary guidance, the committee intends that the following rules apply in the case of taxable asset acquisitions of financially troubled financial institutions pending issuance of rules by the Treasury Department. The committee bill provides that taxpayers can rely on the interim rules for all acquisitions occurring on or after May 10, 1989, and before the date on which the Secretary of the Treasury takes action in exercise of the regulatory authority granted by this bill. The committee anticipates that, where the rules adopted by the Treasury Department are inconsistent with these interim rules, appropriate relief would be accorded to any taxpayer who is a party to a binding written agreement negotiated in good faith in reliance on these interim rules.

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[6] See *Harold T. Paulsen* v. *Commissioner*, 469 U.S. 131 (1985).

[7] The committee's action is not intended to affect the treatment of transactions involving solvent financial institutions (including mutual institutions). No inference should be drawn as to the correctness of the current Internal Revenue Service position with respect to transactions involving such solvent institutions. See, e.g., Rev. Rul. 80–105, 1980–1 C.B. 78; Rev. Rul. 69–3, 1969–1 C.B. 103.

[8] The committee understands that the Internal Revenue Service has issued at least one private letter ruling P.L.R. 8835057 (June 10, 1988), supplemented in P.L.R. 8835058 (June 10, 1988) in which it held that depositor continuity permitted "G" reorganization treatment for a transaction involving an insolvent bank (to which section 368(a)(3)(D) was then inapplicable). While no inference should be drawn as to the correctness of this ruling under prior law, the committee intends it to be clear that such a transaction would not qualify for tax-free reorganization treatment following the enactment of this bill. The committee further intends this position to be included in the regulations or other administrative guidance issued by the Treasury Department pursuant to the grant of authority in this bill.

The committee recognizes that transactions involving assistance payments may be arranged in a variety of different forms, including transactions in which all of the assets and liabilities of the troubled financial institution are acquired as well as transactions in which only certain assets and liabilities of the troubled financial institution are acquired.[9] Indeed, some transactions take the form of an assumption of deposit liabilities in exchange for solely the receipt of assistance payments.[10] The Committee intends that the general treatment of assistance payments as described below will apply to all such transactions.

Treatment of acquired financial institutions in taxable asset acquisitions

The committee intends that Federal financial assistance generally will be deemed to have been received by the financially troubled institution immediately before the acquisition even in those situations where the assistance is paid directly to the acquiring institution.[11] Although most financial assistance received by, or paid with respect to, financially troubled financial institutions would be treated as taxable, such assistance will be deemed to be received by the financially troubled financial institution at the time the assets of such institution are sold or transferred. As a result, the financial assistance generally will be offset by the net operating losses and built-in losses of the financially troubled financial institution. Therefore, the committee, in general, expects that an acquired financially troubled financial institution will have to net tax liability resulting from the receipt of (or deemed receipt) of financial assistance.[12]

Treatment of acquiring financial institutions in taxable asset acquisitions

General rule.—The committee intends that assistance payments generally will be taxable to the acquiring financial institution only to the extent that they exceed basis properly allocable to such payments. In the case of a taxable asset acquisition, the tax attributes of the corporation whose assets were purchased (including net operating loss deductions, built-in losses, etc.) will be eliminated and

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[9] In the case of transactions coming within the jurisdiction of the Federal Deposit Insurance Corporation, these transactions are known as "Total Asset Purchase and Assumption" (TAPA) or "Whole Bank Purchase and Assumption" cases, "Small Loan Asset Purchase and Assumption" (SLAPA) cases, "Clean Bank or Traditional Purchase and Assumption" (P&A) cases, and "Deposit Insurance Transfer Agreement with Purchase of Assets" (DITAPA) cases.

[10] In the case of transactions coming within the jurisdiction of the Federal Deposit Insurance Corporation, these transactions are known as "Deposit Insurance Transfer Agreement" (DITAPA) cases.

[11] The committee intends that interest and original issue discount on notes and expense reimbursements will not be treated as received by the financially troubled financial institution because, as discussed below, such amounts are taxable to the acquiring financial institution.

[12] The committee recognizes that the net operating losses and built-in losses of the financially troubled financial institution may not always be sufficient to offset the amount of financial assistance received (or deemed received) by the troubled institution. This may occur, for example, in cases in which the financially troubled financial institution was a member of an affiliated group of corporations filing a consolidated return and the net operating losses of such institution were used to offset the income of other members of the affiliated group. In such a case, the financially troubled financial institution (or the affiliated group in which the institution is a member) may have net tax liability as a result of receiving financial assistance. In most cases, the committee considers this an appropriate result because other members of the affiliated group have received the benefit of the losses of the financially troubled financial institution in prior years.

the purchase price (generally, the amount of the liabilities of the failed institution that are assumed by the acquiring financial institution and other consideration, if any, provided by the acquirer) will be allocated among the various assets acquired in the transaction. In general, such basis allocation shall reflect the fair market values of all assets acquired in the transaction. However, in the case of assistance payments, it is intended that such basis allocation shall reflect the economic substance of the various types of assistance payments to be made as set forth below:

Negative net worth contributions.—Negative net worth contributions refer to the amounts contributed by the insurer at the time of the acquisition to bring the acquired institution's net worth to zero. The committee intends that basis will first be allocated to negative net worth contributions and that the amount of basis allocated to such payments will be equal to the amount of the contributions. If negative net worth contributions are made in the form of notes, the amount of basis assigned to the contribution generally will equal the principal amount of the notes. (See the section herein entitled "Interest on deferred payments" for further discussion.) As a result, the committee expects that neither the receipt of the notes nor the payment of principal amounts will result in the creation of any net taxable income to the acquiring institution.

Capital loss guarantees and income maintenance agreements relating to specified assets (or pools of assets).—Capital loss guarantees refer to amounts that the insurer promises to pay to the acquiring institution to guarantee that the acquiring institution will receive a designated amount from a specified asset (or pool of assets). Income maintenance payments refer to payments made by the insurer to insure that the acquiring institution earns a minimum amount of income for a designated period of time from specified assets (or a pool of assets). The committee intends that basis be allocated to the specified assets (or pool of assets) in an amount equal to their fair market value as adjusted to reflect the capital loss guarantee and income maintenance agreements applicable to those assets.

The committee intends that amounts received under the capital loss guarantee will be treated as amounts received from the disposition of the guaranteed asset. Thus, the committee expects that, in most cases, there will be no taxable income from the receipt of a payment pursuant to a capital loss guarantee and the disposition of the specified asset because the sum of the amount received from the disposition of the asset and the guarantee will not exceed the amount of basis allocated to those assets. On the other hand, where the amount realized from the disposition of the asset exceeds the amount so allocated (e.g., where the value of the asset has appreciated over the guaranteed value), the committee expects that there will be taxable income because the amount realized from the disposition of the specified asset (and the guarantee, if any) exceeds the basis allocated to those assets.[13]

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[13] The committee intends that amounts paid by the insurer to reimburse the acquiring institutiton for capital items (e.g., the cost of completing the construction of a building) would be treated in a manner similar to capital loss guarantees (i.e., the right to receive such payments

Continued

The committee intends that no basis would be separately allocated to income maintenance agreements and that amounts received under an income maintenance agreement would be treated as yield from the asset or pool of assets. Accordingly, any income maintenance payments generally would result in an increase in taxable income. The committee considers this a correct result because income maintenance payments are intended to increase the amount of income earned by the acquiring institution (as if the assets themselves were producing that level of income.).

Expense reimbursements.—Expense reimbursements refer to amounts that the insurer pays the acquiring institution to reimburse the acquiring institution for expenses it incurs or will incur in the transaction or in maintaining or disposing of acquired assets (e.g., the administrative costs associated with the acquired assets). The committee intends that there would be no basis allocated to the right to receive expense reimbursements. Accordingly, amounts received as expense reimbursements would be includible in gross income, but such income generally would be offset by the deduction arising from the expense.[14]

Interest on deferred payments.—Interest (or original issue discount that is taxable as interest) can arise when payment of any of the above items is deferred through issuance of a note or a deferred payment contract. The amount of original issue discount is the excess of the redemption price at maturity over the amount of any basis allocated to the right to receive future payments. The committee intends that stated interest on any such notes and any original issue discount should result in taxable income. However, whether the principal amount of the notes (as determined under the OID rules) will be taxable to the acquiring institution, will depend on the type of assistance payment which the note represents.

Examples of tax treatment of acquiring institution in taxable asset acquisitions

The principles set forth above may be illustrated by the following examples.

Example 1: Cash negative net worth payments.—In return for assuming deposit liabilities of a failed financial institution in the amount of $100, an acquiring financial institution receives loan portfolio assets with a fair market value of $60 and cash assistance payments (a negative net work payment) of $40. The acquiring financial institution allocates $60 of its $100 of basis arising from the assumption of $100 of liabilities to the loan portfolio assets and $40 of basis to the cash assistance payments.

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should be treated as part of the value of the building). Similarly, the right to exchange an asset for cash or a different asset with the insurer (i.e., a "put" right) should be treated as a right that affects the value of the asset subject to the "put". Accordingly, amounts received pursuant to such rights would be treated as received in exchange for the underlying asset and, therefore, would not result in the receipt of taxable income.

[14] As an alternative to treating expense reimbursement as income with an offsetting deduction, the Treasury Department may consider treating in its regulations the acquiring institution as an agent of the insurer with respect to such expenses and reimbursements so that such items would be neither includible in income of, nor allowed as a deduction to, the acquiring institution.

There is no net taxable income arising from the receipt of the cash assistance payments because the amount of basis allocable to the cash assistance (i.e., $40) equals the amount of assistance payment received (i.e., $40).[15]

Example 2: Negative net worth payments as interest bearing notes.—The facts are the same as Example 1, except that, instead of receiving assistance in the form of cash, the assistance is in the form of a note with a maturity of three years, a principal amount of $40 and bearing a market rate of interest. Consequently, the note has a fair market value of $40. The acquiring financial institution allocates $60 of its $100 basis to the loan portfolio and $40 of its basis to the note.

There is no taxable income arising from the receipt of the note or the principal payments on the note because the amount of the basis allocable to the assistnce note (i.e., $40) equals the principal received with respect to the assistance note (i.e., $40). Interest on the note is includible in gross income as interest income under the taxpayer's normal method of accounting.

Example 3: Negative net worth payments as OID notes.—The facts are the same as Example 2, except that the note is not interest bearing, has a stated principal amount at maturity of $50, and has a fair market value of $40.

The note is treated as a note with an original issue price of $40, a stated redemption price at maturity of $50, and original issue discount of $10. The acquiring financial institution allocates $40 of its $100 basis to the note.

The acquiring financial institution will recognize interest income of $10 over the 3-year life of the note under the principles of section 1272 and the amount of such interest income would be added to the basis of the note over the 3 years as it is recognized. No additional amount of taxable income will be realized upon payment of the note at maturity since the acquiring institution's basis in the note at that time of $50 (i.e., $40 originally allocated to the note plus $10 of recognized original issue discount) will be equal to the amount received under the note.

Example 4: Capital loss guarantee and income maintenance payments.—The facts are the same as Example 1, except that assistance also is received in the form of a guarantee that the acquiring financial institution will realize at least $60 from the principal of the loan portfolio assets (i.e., a capital loss guarantee) and that the income from the loan portfolio assets will be equal to at least the current market rate of interest (i.e., an income maintenance agreement). As a result of the capital loss guarantee and the income maintenance agreement, the fair market value of the loan portfolio assets is $60.

The acquiring financial institution allocates $40 of its $100 basis to cash assistance payments and $60 of its $100 basis to the loan portfolio assets and the capital loss guarantee.

There is no taxable income arising from any amounts received pursuant to the capital loss guarantee because the amounts received under the capital loss guarantee will only increase the

[15] A deduction will be allowed in accordance with the taxpayer's normal method of accounting if the taxpayer uses the $40 of cash assistance to pay otherwise deductible expenses.

amounts received directly from the loan portfolio assets to $60. The amount realized from the capital loss guarantee and the loan portfolio assets is $60 which is equal to the acquiring financial institution's basis in those assets and, accordingly, no income or gain is realized. If, however, the acquiring financial institution realizes $70 from the loan portfolio assets (and, consequently, no amounts are received pursuant to the capital loss guarantee), the acquiring financial institution would realize income of $10 because the amount realized from the loan portfolio assets (i.e., $70) exceeds the acquiring financial institution's basis in the loan portfolio assets (i.e., $60) by $10.

Amounts received pursuant to the income maintenance agreement are includible in gross income as those amounts are accrued or received because no basis is allocated to the income maintenance agreement.

Example 5: Expense reimbursement payments.—The facts are the same as Example 1, except that the acquiring financial institution also receives a contract obligation to reimburse the acquiring financial institution for loan collection expenses from the loan portfolio assets. The acquiring financial institution receives $20 pursuant to that contract to reimburse it for expenses of $20 on the collection of loan portfolio assets. The acquiring financial institution does not allocate any of its basis to the contract obligation to reimburse collection expenses.

The acquiring financial institution has gross income of $20 from amounts derived from the contract obligation. In addition, the taxpayer has deductions of $20 from incurring the collection expenses. As a result, the acquiring financial institution has no net taxable income from amounts received under the contract obligation. The result would be the same regardless of the amount received pursuant to the contract obligation.

EFFECTIVE DATE

The repeal of the special tax provisions relating to (1) treatment of acquisitions as tax-free reorganizations and (2) the relaxation of the limitations on losses and excess credits, is effective for transactions occurring on or after May 10, 1989, the date of Committee action.

The repeal of the special tax provision relating to the tax-free treatment of assistance payments applies to any amounts received or accrued by the financial institution on or after May 10, 1989, except that such repeal does not apply to transfers of financial assistance on or after such date pursuant to acquisitions occurring before May 10, 1989. In the case of any payment of financial assistance pursuant to a transaction on or after May 10, 1989, and before the Treasury Department's exercise of regulatory authority under revised section 597 of the Code, the taxpayer may rely on the legislative history relating to the repeal of the tax-free treatment of assistance payments in determining the proper tax treatment of such payments.

2. Clarification of 1988 Legislation Applicable to Financially Troubled Thrift Institutions and Financially Troubled Banks (new sec. 1401(b)(2) of the committee amendment and sec. 4012(c) of the Technical and Miscellaneous Revenue Act of 1988)

PRESENT LAW

Under present law, a special tax rule provides that payments from the FSLIC or the FDIC to a financially troubled financial institution are not included in the income of the recipient institution and such institutions need not reduce their basis in property by the amount of such financial assistance. However, there may be a reduction in certain tax attributes of the recipient of such assistance equal to 50 percent of the amount of the financial assistance (Code sec. 597).

The Technical and Miscellaneous Revenue Act of 1988 (the "1988 Act") extended this special rule to FDIC transactions and certain FSLIC transactions (involving institutions which did not meet a qualifying asset test), effective for assistance payments made pursuant to acquisitions after November 10, 1988, the date of enactment of the 1988 Act.

REASONS FOR CHANGE

The legislative history to the 1988 Act reflects the intent of Congress that tax attribute reduction with respect to FDIC transactions and certain FSLIC transactions (involving institutions which did not meet a qualifying asset test) is effective on the same day that the special tax rule was extended to such transactions.[16] However, the statute mistakenly does not so provide. The clarification carries out the intent of Congress in enacting the 1988 Act.

EXPLANATION OF PROVISION

The committee amendment clarifies that the reduction in tax attributes equal to 50 percent of the amount of nontaxable financial assistance received with respect to FDIC transactions and certain FSLIC transactions (involving institutions which did not meet a qualifying asset test) is effective on the same date that the special tax rule relating to financially troubled financial institutions was extended to such transactions (i.e., acquisitions after November 10, 1988, the date of enactment of the 1988 Act).

EFFECTIVE DATE

The provision is effective as if included in the 1988 Act.

3. Conforming Changes Applicable to Financially Troubled Thrift Institutions (new secs. 1401(b)(3) and 1401(c)(7) of the committee amendment and Code sec. 593(e))

PRESENT LAW

Under present law, a recapture rule applicable to distributions of property by certain thrift institutions to shareholders with respect to their stock does not apply to financially troubled thrift institu-

[16] *See* H. Rep. No. 1104, 100th Cong., 2d Sess. (vol. 2) 95 (1988).

tions making certain distributions to the Federal Savings and Loan Insurance Corporation (the "FSLIC") (Code sec. 593(e)).

Payments from the FSLIC to a financially troubled thrift institution are not included in the income of the recipient institution and such institutions need not reduce their basis in property by the amount of such financial assistance. However, there may be a reduction in certain tax attributes of a financially troubled thrift institution equal to 50 percent of the amount of the financial assistance (Code sec. 597).

REASONS FOR CHANGE

Provisions of the reported bill provide for the dissolution of the FSLIC and for the formation of successor entities to take over its assets, liabilities, and functions. The committee believes that the exception of present law from the recapture rule for repayments to the FSLIC should continue to apply despite its dissolution and the formation of successor entities. In addition, while the committee believes that the special tax rules applicable to financially troubled financial institutions should be terminated for acquisitions occurring on or after May 10, 1989, the committee believes that tax consequences of present law should continue to apply to acquisitions occurring before that date, despite the dissolution of the FSLIC and the formation of successor entities.

EXPLANATION OF PROVISION

The committee amendment conforms section 593(e) of the Code to take into account successor entities to the FSLIC established by the reported bill. The committee amendment also conforms seciton 597 of the Code (as it existed before this bill) to take into account successor entities to the FSLIC established by the reported bill.

EFFECTIVE DATE

The provision is effective on the date of enactment of the bill.

4. Tax Exemption of Resolution Funding Corporation (REFCORP) and Resolution Trust Corporation (RTC) (new sec. 1402 of the committee amendment and Code sec. 501)

PRESENT LAW

Federal tax exemptions for instrumentalities of the United States organized on or after July 18, 1984, may be provided only by an amendment to the Internal Revenue Code or by a provision (not amending the Code) enacted as part of a revenue act (Code sec. 501(c)(1)).

REASONS FOR CHANGE

The reported bill provides exemptions from Federal income tax for REFCORP and RTC outside of the Internal Revenue Code. The committee wishes to retain the tax exemptions of REFCORP and RTC because such entities are an integral part of the Federal government's provision of deposit insurance, but to provide such exemptions in the Internal Revenue Code.

EXPLANATION OF PROVISION

The committee amendment provides exemptions from Federal income tax for REFCORP and RTC in the Internal Revenue Code. However, interest on any obligations issued by the RTC or by REFCORP are subject to Federal taxes.

EFFECTIVE DATE

The provision is effective on the date of enactment of the bill.

5. Annual Reports on Transactions in which Federal Financial Assistance Is Provided (new sec. 1403 of the committee amendment)

PRESENT LAW

Financially troubled financial institutions may receive financial assistance from governmental entities providing Federal deposit insurance. There is no requirement that the Congress be provided with information concerning such assistance transactions.

REASONS FOR CHANGE

The committee is concerned about a lack of oversight concerning (1) the amount of financial assistance that governmental entities provide to financially troubled financial institutions, and (2) the amount of any tax benefits associated with such assistance transactions.

EXPLANATION OF PROVISION

The committee amendment requires the Treasury Departmernt to submit annual reports to the committee and the Senate Finance Committee concerning (1) the aggregate amount of Federal financial assistance and any tax benefits available as a result of acquisitions involving Federal assistance occurring during the year for which the report is made and (2) the aggregate amount of Federal financial assistance provided and aggregate tax benefits utilized during the report year, which are attributable to acquisitions involving Federal financial assistance occurring in prior years.

EFFECTIVE DATE

The provision is effective on the date of enactment of the bill.

6. Tax Treatment of the Federal Deposit Insurance Corporation (FDIC) and its Obligations

PRESENT LAW

Obligations issued by the FDIC are not exempt from Federal tax. The FDIC is exempt from Federal tax.

REASONS FOR CHANGE

The reported bill may have inadvertently changed the tax treatment of obligations issued by the FDIC and erroneously removed the exemption of the FDIC from Federal tax. In addition, the reported bill could be interpreted as changing the Federal tax treat-

ment of financial institutions for which the FDIC acts as a receiver.

EXPLANATION OF PROVISION

The committee amendment retains present law with respect to the Federal tax treatment of the FDIC, obligations issued by the FDIC, and financial institutions for which the FDIC acts as a receiver.

EFFECTIVE DATE

The provisions is effective on the date of enactment of the bill.

7. Annual Study of the Relationship Between the Public Debt and Activities of Government Sponsored Enterprises (new section 1404 of the committee amendment)

PRESENT LAW

In order to promote a variety of public purposes, the Congress has established a number of government sponsored enterprises (GSEs), including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank System, the Financing Corporation, the Farm Credit Banks, the Banks for Cooperatives, the Federal Agricultural Mortgage Corporation, the Farm Credit System Financial Assistance Corporation, the Student Loan Marketing Association, and the College Construction Loan Insurance Association. Pursuant to their charters and Federal regulations, GSEs are permitted to issue debt and/or guarantee other securities. Because of the special legal attributes granted to GSEs, these securities are explicitly and/or implicitly backed by the United States Treasury and are traded in the Federal agency credit markets. Therefore, these GSE securities effectively compete with bonds issued directly by the United States Treasury.

As financial intermediaries, GSEs are also subject to a variety of risks, including credit risk, interest rate risk, management and operations risk, and business risk. Because their debt obligations, other liabilities, and the securities they have guaranteed have an explicit and/or implicit Federal guarantee, the risk of default is borne, to a significant degree, by the Federal government. However, under current law, neither the unified budget, nor any other Federal budget documents show any cost to the Federal government from the risks it bears as a result of the activities of GSEs, either individually, or in the aggregate.

REASONS FOR CHANGE

In recent years, there has been a steady increase in the number of GSEs, and in the volume of obligations and other securities they have issued and/or guaranteed. In addition, the Federal government has, in fact, been called upon to provide financial support to some GSEs that have suffered large losses. For example, Congress provided a significant financial assistance to the Farm Credit System, which suffered losses of $4.6 billion in 1985 and 1986. The increase in activity by GSEs may raise interest costs for all Federal

borrowing, and the potential Federal liabilities stemming from the explicit and/or implicit Federal guarantees of these activities are large and growing rapidly.

At the present time, it is impossible for the committees of Congress charged with responsibility for the bonded debt of the United States to determine the actual effect of these GSE activities on Federal borrowing, because the financial risks to the government associated with the activities of GSEs are not consistently or regularly quantified. Consequently, the committee believes that, in order to better manage the bonded debt of the United States, it is appropriate to study and assess the financial safety and soundness of the activities of GSEs and the potential impact of their operations on Federal borrowing.

EXPLANATION OF PROVISION

The bill requires the Treasury Department to annually conduct a study to assess the financial safety and soundness of the activities of GSEs and the impact of their operations on Federal borrowing. The Secretary has authority, under the bill, to require the GSEs to furnish the information necessary to conduct the study. Such information shall include information on the assets of, and the assets backing securities guaranteed by, each GSE. The committee intends that the annual report required by this amendment shall contain information material to investors and the public, and, therefore, the committee expects the GSEs to respond promptly, accurately and completely to requests by the Secretary of the Treasury for information.

In conducting the study, the committee expects and directs the Secretary of the Treasury to prescribe the means of analyzing risks to give an accurate and comparable assessment of the risk exposure resulting from the activities of each GSE. In carrying out this requirement, the committee intends for the Secretary of the Treasury to assess credit risk in a manner similar to that used by private investor-oriented securities rating services. The committee intends that the management and operations risk, and the business risk of GSEs, be calculated in a manner deemed appropriate by the Secretary of the Treasury. The committee further intends that the Secretary of the Treasury should assess the interest rate risk and overall risk of each GSE by calculating the duration of each GSE's assets, liabilities, contingent liabilities; and by circulating the marked-to-market net worth of each GSE; and, by simulating the effect of changes in interest rates, and other relevant economic variables, on that marked-to-market net worth. Finally, the committee intends that the Secretary of the Treasury shall evaluate the overall effect of all GSE activities on Federal borrowing. The results of the study are to be submitted to the Committee on Ways and Means and the House of Representatives and the Committee on Finance of the Senate not later than March 1 of each year.

The committee intends that the adoption of this amendment and the conduct of this annual study will not in any way alter the existing jurisdictional precedents of the House of Representatives with respect to any GSE which is subject to such annual study.

B. On-Budget Treatment of the Resolution Funding Corporation (REFCORP)

(Amendments to Sections 501, 502 and 504 of the bill)

PRESENT LAW BUDGETARY TREATMENT OF RELATED ENTITIES

As a government entity, activities of the FSLIC are fully reflected in the Federal budget. Its income and expenditures are recorded in a revolving fund that was intended to be self-supporting. Income from assessments, investments, and liquidations is used to pay insurance and administrative costs. Net outlays each year are the difference between FSLIC's receipts and disbursements. Transactions of the FDIC are treated similarly.

The Competitive Equality Banking Act of 1987 created the Financing Corporation ("FICO"), a government-sponsored enterprise, to borrow $10.8 billion from the public in amounts not to exceed $3.75 billion a year. The proceeds are to be conveyed to FSLIC for closing or merging savings and loan institutions. Both principal and interest of FICO bonds are paid from industry funds and are not guaranteed by the government. Interest payments are made from premiums that would otherwise have gone to FSLIC. Principal will be paid from maturing deep discount Treasury obligations purchased with funds from Federal Home Loan Banks.

The FICO is off-budget because it was considered to be owned by the Federal Home Loan Bank system, a privately owned government-sponsored enterprise. Because the FSLIC is not required to repay the funds it receives from the FICO, these funds are treated as offsetting collections to the FSLIC fund. Therefore, they are recorded as negative outlays on the budget and offset, dollar for dollar, the increased FSLIC disbursements they finance. As a result, financing FSLIC spending through the issuance of FICO bonds has no net effect on the Federal deficit.

H.R. 1278, AS REPORTED BY THE HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS [17]

The House Committee on Banking, Finance and Urban Affairs did not alter the basic structure of the Administration's proposal to finance the activities of the RTC. The financing mechanism established by the Administration is off-budget and does not count toward the public debt limit since the obligations to be issued to fund the RTC are not obligations of the United States government.

Under the Administration's plan, the RTC would issue nonvoting capital certificates to the REFCORP, a new corporation to be chartered by the Federal Housing Finance Board. The REFCORP in turn would be authorized to issue up to $50 billion in long-term debt offerings to purchase this capital stock. The REFCORP obligations would not be guaranteed as to principal or interest by the United States and the full faith and credit of the United States would not stand behind these obligations. The Treasury Department would, however, be authorized to pay the interest on these obligations to the extent that other sources of funds for these inter-

[17] *See* H. Rep. 101-54, Part 1, May 16, 1989.

est payments are insufficient, and to the extent that funds are appropriated for the purpose pursuant to the authorization contained in this legislation.

The principal on these obligations would be paid by funds received from the Federal Home Loan Banks and other sources if the bank payments are insufficient. The banks would contribute $2 billion of their retained earnings. These funds would supplement any funds that may be required by the Financing Corporation under section 21 of the Federal Home Loan Bank Act. The banks would also annually contribute additional sums for principal and interest payments, but the aggregate of such payments would not exceed the lesser of $300 million or 20 percent of the aggregate net earnings of the Federal Home Loan Banks for each year until the Funding Corporation had no remaining liabilities. The term "net earnings" refers to the net earnings of the previous calendar year. The funds earmarked for principal payments would be used to purchase certain zero coupon securities which upon maturity would yield an amount sufficient to pay the principal of the REFCORP bonds. If the payments from the Federal Home Loan Banks have been exhausted and additional funds are needed, Savings Association Insurance Fund ("SAIF") members could be required to contribute a portion of their insurance premiums, and finally, certain receivership proceeds could be used to make up any remaining shortfall.

REASONS FOR CHANGE

The primary reason the committee adopted these amendments is to reduce the cost of the bailout to the American taxpayer. The Federal Reserve, the Treasury Department and the Congressional Budget Office ("CBO") all agree that borrowing from the public without the full faith and credit of the United States Government would significantly increase the borrowing cost relative to an equivalent Treasury security.

The staff of the Board of Governors of the Federal Reserve System estimates that the REFCORP bonds would carry yields about 30 basis points higher than 30-year Treasury bonds. This implies additional annual interest costs of $150 million, or $4.5 billion over the 30-year life of the bonds. The Treasury Department estimates REFCORP borrowing costs at 25 basis points above Treasury borrowing costs due to the off-budget financing.

The CBO has projected increased borrowing costs of the REFCORP of 40 basis points for the $10 billion of borrowing in 1989, 35 basis points for the $25 billion of borrowing in fiscal year 1990, and 30 basis points for the $15 billion of borrowing in fiscal year 1991. This would raise the cost of borrowing by over $600 million over the next five years, and by approximately $4.5 billion over the next 30 years.

The committee considered the Treasury Department's argument that providing on-budget financing along with a corresponding exemption of expenditures from the Balanced Budget and Emergency Control Reaffirmation Act of 1987 (the "Gramm-Rudman Act") would raise the overall interest cost of Treasury borrowings, but the committee believes that the financial markets will recognize

that the off-budget financing approach is a back-door method of avoiding the Gramm-Rudman Act restrictions, and that interest rates will not rise due to an exemption. The committee also noted that CBO has projected no increased interest cost as a result of an exemption from the Gramm-Rudman Act and that either approach involves the same amount of borrowing.

The committee believes that the exemption from the Gramm-Rudman Act restrictions is better than off-budget financing. The off-budget financing scheme also has potential implications for the budget process. Any use of off-budget means to finance new public policy objectives creates a precedent and an incentive to make use of off-budget financing for other programs in order to avoid fiscal constraints.

The committee believes there are reasons for the exemption from Gramm-Rudman Act restrictions in this legislation that do not apply to other new or expanded spending programs. The liabilities of Federally insured thrift institutions have already been incurred. By resolving the thrift crisis, the Federal Government is upholding its promises to the depositors in financially troubled savings and loan institutions. In effect, the bill recognizes part of the structural deficit which, in fact, is already being financed by the credit of the U.S. government.

Moreover, funds used to resolve insolvent financial institution cases would not add to aggregate levels of consumption in the economy but would rapidly be returned to the lending stream. The on-budget financing plan would not create new funds but, rather, would replace resources that depositors still consider to exist even though the thrift had lost them in its investment activities. This government spending is unlikely to change the behavior of depositors who would have the same amount of money both before and after resolution. As a result, the financing for the thrift plan is significantly different from types of government spending that the Gramm-Rudman Act was intended to reduce.

In order to further minimize potential costs to taxpayers, the committee altered the payments required from the Federal Home Loan Banks in two ways. First, the committee deleted the annual aggregate limitation equal to 20 percent of previous-year net earnings of the banks. This limitation applies to interest payments and certain principal payments. The committee also believes that the industry should be able to support this level of required payments in real terms until the borrowings are paid back to the U.S. Treasury. Consequently, the committee indexed the annual $300 million interest payment from the banks to the overall Consumer Price Index ("CPI") beginning in 1993.

The committee amendment increases the industry contributions by approximately $640 million between fiscal years 1990 through 1994 and by $9.6 billion over the 30-year life of the bonds.

By both increasing industry contributions and reducing the costs of borrowing, the committee has reduced the cost of financing the overall assistance program to taxpayers by $14.7 billion, or in net present value terms (using a real interest rate of 2 percent) by $4.8 billion.

EXPLANATION OF PROVISIONS

The committee amendments would move the REFCORP and the financing plan on-budget. The basic structure of H.R. 1278, as amended by the Committee on Banking, Finance and Urban Affairs, would be retained except for the following:

(1) The REFCORP would be established as a wholly-owned government corporation subject to the general supervision and direction of the Secretary of the Treasury. The receipts and disbursements of the REFCORP would be included in the budgets submitted by the President and any budget adopted by Congress.

(2) The Federal Home Loan Banks would pay a larger amount to the REFCORP, as compared to the bill reported from the Committee on Banking, Finance and Urban Affairs, because the aggregate annual percentage limitation on Federal Home Loan Bank payments would be deleted. This limitation of interest and certain principal payments was equal to 20 percent of net earnings of Federal Home Loan Banks. In addition, the $300 million annual interest payments required from the Federal Home Loan Banks is indexed to the overall CPI beginning in 1993. The REFCORP would assess each SAIF member in an identical fashion to the bill reported from the Committee on Banking, Finance and Urban Affairs. There would, however, be no issuance of non-voting capital stock to the Federal Home Loan Banks nor would the REFCORP purchase capital certificates issued by the RTC. The Secretary is empowered to impose a lien on any bank or SAIF member which does not comply with the required payment or assessment.

(3) The REFCORP would be given authority to borrow $50 billion from the Treasury Department. The REFCORP would purchase zero coupon bonds from the Treasury Department to defease the principal of such borrowings. These purchases of zero coupon bonds would not be double counted against the public debt limit. At the end of the life of the bonds, the REFCORP owes the principal on the $50 billion of borrowing to the treasury and the Treasury owes the REFCORP the face value of the zero coupon bonds. These assets and liabilities should cancel each other and at that point, the REFCORP should end.

(4) The additional outlays of the RTC as a result of the net borrowing ($50 billion less the contributions from the Federal Home Loan Banks and SAIF members) would not be counted for purposes of calculating the deficit which is compared to the maximum deficit amounts established in the Gramm-Rudman Act. This would include the submission of the President's budget under section 1105 of Title 31; the budget resolutions considered or adopted by Congress; and the calculation of the deficit and excess deficit in sections 251 and 252 of the Gramm-Rudman Act. The amount excluded shall be identified in each budget or report required under the Gramm-Rudman Act.

(5) The REFCORP would have no employees, but employees of the Treasury Department would be authorized to act on behalf of the REFCORP. All administrative expenses and costs of issuing the debt of the REFCORP would be paid on the same basis as provided in the bill reported by the Committee on Banking, Finance and Urban Affairs' bill. It is the committee's intent that the Secretary

of the Treasury obtain reimbursement from the Federal Home Loan Banks on a reasonable-cost basis, and the committee expects that their costs would be less than those of an off-budget REFCORP agency.

(6) Annual General Accounting Office audits of the REFCORP, the RTC and other entities created in the bill would be required.

(7) The Director of the Office of Mangement and Budget must be consistent in his assessment of the amount that outlays increased as a result of the net borrowings of the REFCORP and the amount that is subtracted from the deficit for comparison to the maximum deficit amounts. The committee intends that the REFCORP shall borrow from the Treasury only as RTC's cash needs exceed its funds available from other sources, and that any funds borrowed by the REFCORP shall be immediately transferred to RTC. The bill provides that funds received by the REFCORP from the Federal Home Loan Banks, savings and loan institutions, and liquidations will, for the purposes of ensuring payment of the principal of the REFCORP's debt, be invested in zero-coupon securities issued by the Treasury. The REFCORP shall purchase the zero-coupon securities prior to borrowing from the Treasury. The Director of the Office of Management and Budget, in estimating the deficit and excess deficit for any fiscal year under sections 251 and 252 of the Gramm-Rudman Act, shall subtract from the estimated deficit and excess deficit only the portion of RTC outlays for that year that he estimates will be financed with net borrowing by the REFCORP.

(8) The Directorate provided in the bill reported from the Committee on Banking, Finance and Urban Affairs to supervise the activities of the REFCORP, including industry representatives, was deleted as the committee believes that only government employees should manage a government entity.

The committee amendment which places the REFCORP on-budget as a government entity and requires it to borrow directly from Treasury is within the committee's jurisdictional responsibilities for management of the nation's debt. The committee, however, intends that this action would not establish any jurisdictional precedent and would not be cited to enhance or expand the committee's jurisdiction.

The committee also wishes to express its serious concerns about the unlimited authority of the RTC to issue notes and impose additional obligations upon the United States Treasury—an unlimited authority that is included in the bill as reported by the Committee on Banking, Finance and Urban Affairs.

The committee is under the impression that the current language in H.R. 1278 would allow the RTC to issue notes and guarantees, either explicitly or in a form similar to a yield maintenance agreement. Furthermore, unlike other language in the bill that specifically limits the obligations of each of the two new federal deposit insurance funds so as not to exceed their net worth, there seems to be no limit on the authority of RTC to issue notes or to issue guarantees.

It was exactly this unlimited authority which allowed FSLIC to issue notes late last year of approximately $11 billion. There are now some $19 billion of these notes outstanding. In addition, FSLIC made commitments to cover yields on assets totaling about $44 bil-

lion over the next 10 years. These borrowings and contingent liabilities enabled FSLIC to undertake many of the November and December 1988 deals. This form of borrowing, because it lacks the full faith and credit of the Federal government, can easily be 50 to 150 basis points or more above an equivalent Treasury security. To the extent that this authority is utilized, it increases the cost of the bailout to the American taxpayer. In addition, the borrowing implicitly commits the Treasury to honor these obligations at some future date. In the long term, Treasury will be responsible for paying these obligations when RTC is dissolved.

The committee strongly urges that the broad authority now included in H.R. 1278 be limited at the earliest possible point in the legislative process.

EFFECTIVE DATE

The committee amendment is effective upon enactment.

III. BUDGET EFFECTS OF THE COMMITTEE AMENDMENTS

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the committee amendments to H.R. 1278.

H.R. 1278, with the committee amendments, is estimated to reduce the deficit by $2.7 billion over the period fiscal years 1989–1994 relative to the version reported by the House Banking Committee and assuming that the REFCORP is off-budget under the Banking Committee Bill. See Table 1 in the attached CBO letter. For fiscal year 1990, there is a net reduction of $0.3 billion.

The tax provisions of H.R. 1278, including the committee amendments, are estimated to reduce the net deficit by $1,469 million over the period, fiscal years 1989–1994. Over this period, revenues are estimated to increased by $2,944 million, and outlays are estimated to increase by $1,475 million. (See the following table for the year-by-year estimated budget effects of the tax provisions.)

REVENUE EFFECTS OF WAY AND MEANS COMMITTEE AMENDMENTS TO H.R. 1278, "THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989"

[Fiscal years 1989–94; in millions of dollars]

Item	1989	1990	1991	1992	1993	1994	1989–94
Repeal the special rules for FSLIC and FDIC:							
Revenue effect	556	842	634	389	310	213	2,944
Outlay increase [1]	−560	−589	−288	−38			−1,475
Net deficit effect	−4	253	346	351	310	213	1,469
Provide tax exemption for REFCORP and RTC in the Internal Revenue Code							

[1] The increase in outlays was provided by the Congressional Budget Office (CBO).

IV. VOTE OF THE COMMITTEE AND OTHER MATTERS TO BE DISCUSSED UNDER HOUSE RULES

A. Vote of the Committee

In compliance with clause 2(l)(2)(b) of Rule XI of the Rules of the House of Representatives, the following statement is made about the vote of the Committee on Ways and Means on the motion to report committee amendments to the bill, H.R. 1278. The committee ordered the bill, as amended, favorably reported in executive session by a roll call vote of 26 ayes and 10 noes.

B. Other Matters

In compliance with clause 2(l)(3) and 2(l)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made with respect to the committee action on H.R. 1278.

OVERSIGHT FINDINGS

With respect to subdivision (A) of clause 2(l)(3) (relating to oversight findings), the committee advises that it was a result of the committee review of tax and Federal debt management issues concerning the Administration's proposed reform of financially troubled financial institutions that the Committee concluded that it is appropriate to enact the provisions of the committee amendments to H.R. 1278.

Public hearings on financially troubled financial institutions was held by the Committee on Ways and Means on February 22 and March 9, 1989. The committee met in executive session on May 9 and 10, 1989, and ordered the bill as amended favorably reported on May 18, 1989.

TAX EXPENDITURES

With respect to subdivision (B) of clause 2(l)(3), the committee states that the changes made to existing law by the committee amendments as reported involve a reduction in tax expenditures of $2,944 million over the period fiscal years 1989–1994. (See the revenue figures in Part III of this report.)

BUDGET AUTHORITY

With respect to subdivision (B) of clause 2(l)(3), the committee states that the changes made to existing law by the committee amendments as reported involve new budget authority (increases in outlays) of $1,475 million over the period fiscal years 1989–1994. (See the budget outlay figures in Part III of this report.)

CONGRESSIONAL BUDGET OFFICE ESTIMATES

With respect to subdivision (C) of clause 2(l)(3), the Committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates (as indicated in Part III of this report), and submitted the following statement with which the committee is in agreement:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 22, 1989.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the amendments to H.R. 1278, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as ordered reported by the House Committee on Ways and Means on May 19, 1989.

The committee's amendments would repeal certain tax preferences currently provided to acquirers of banks and thrifts; modify the amount of the annual contributions that the Federal Home Loan Banks (FHLBs) would be required to make to the Resolution Funding Corporation (REFCORP); and establish REFCORP as an on-budget federal agency, with the authority to borrow up to $50 billion from the Treasury, rather than the from the public.

BUDGET IMPACT

CBO estimates that, over the 1989–1994 period, the committee's amendments would save a net of $1.5 billion from repeal of certain tax provisions and would increase federal receipts from the FHLBs by $0.6 billion, relative to the version of H.R. 1278 reported by the House Committee on Banking, Finance, and Urban Affairs. In addition, the amendments would change the financing mechanism in the Banking Committee bill, so that REFCORP would be clearly identified as an instrumentality of the federal government and would borrow $50 billion from the Treasury, rather than issuing its own debt instruments in the financial markets. This would place all costs of the plan on-budget and would save an estimated $0.7 billion in interest costs over the 1989–1994 period.

How this result compares with the Banking Committee bill depends on the budgetary treatment assumed for that version of the legislation, about which there is some disagreement. The Ways and Means Committee's amendments would increase the unified budget deficit in fiscal years 1989–1991, relative to the Banking Committee bill, if most costs of the latter are considered to be off-budget; they would have the opposite effect if the costs of the Banking Committee bill are on-budget.

If most costs of the Banking Committee bill are off-budget

The Senate has passed a version of the Administration's plan, and the House Banking Committee has reported another version, both with the clear intent that there be no net budget impact from the $50 billion to be raised and spent under that plan in 1989–1991. The Administration has indicated its intention to score its proposal that way, and both the Concurrent Resolution on the Budget—Fiscal Year 1990 and the budget summit agreement on which it is based include no net on-budget spending for the savings and loan legislation. While there are serious doubts as to whether the Administration plan meets the necessary technical criteria for off-budget treatment (as discussed below), the intention to do so is unmistakable.

If the Banking Committee bill is assumed to result in most costs being recorded off-budget in 1989–1991, the Ways and Means amendment would have the effect of putting these costs on-budget, but excluding them from the budget totals used for the purposes of the Balanced Budget Act (Gramm-Rudman-Hollings). Table 1 (attached) shows the resulting budget impact, relative to the Banking Committee bill—an increase in the unified budget deficit of $46.4 billion over the 1989–1994 period from the change in budgetary treatment, partially offset by savings of $2.8 billion. The net increase in the unified budget deficit would be $43.7 billion over the six-year period. For purposes of the Balanced Budget Act, $46.4 billion of this increase would be excluded from the deficit calculations, and the amendments would therefore result in net savings of $2.8 billion over the six years for purposes of that act.

If all costs of the Banking Committee bill are on-budget

The Congressional Budget Office believes that the costs of the Administration plan and the Banking Committee bill should properly be treated as entirely on-budget, because REFCORP should be considered a government entity. It would be created by the government for the sole purpose of borrowing funds and transferring them to a federal agency—the Resolution Trust Corporation (RTC). REFCORP actions would be controlled by regulations prescribed by the RTC Oversight Board, which would consist of five federal officials. It could not pay dividends to or otherwise benefit its nominal owners, the FHLBs. In fact, the funds "invested" by the FHLBs would not be an investment at all, but would more closely resemble an assessment, since there is nothing voluntary about their contribution. The bill would also give REFCORP the authority to collect assesments of federally-insured thrifts, a function normally reserved for government agencies. Furthermore, the Treasury would pay most of the cost of REFCORP borrowing by covering most of the interest costs.

CBO, therefore, considers REFCORP to be most appropriately treated as an on-budget government entity, even under the Administration's proposal. Its borrowing should be treated as a means of financing, like Treasury bonds, and not as income (offsetting collections) to the government. The receipt of the $50 billion, therefore, should not offset RTC's spending of the proceeds, and as a result, substantial net outlays should be recorded over the 1989–1991 period.

In CBO's judgment, the budget impact should be the same even if REFCORP were considered to be a nongovernmental entity. In that case, the $50 billion in funds provided by REFCORP to the RTC should be treated as borrowing by a federal agency (RTC) from REFCORP, because the government would be responsible for substantial debt service payments to REFCORP. Consequently, CBO believes that RTC's receipt of the $50 billion should not be treated as an offsetting collection, even if REFCORP were not considered a governmental entity.

Table 2 (attached) shows the budget impact of the Ways and Means amendments, if the costs of the Banking Committee bill are determined to be on-budget. In that case, the unified budget deficit would be reduced by $2.8 billion over the 1989–1994 period, relative

to the Banking Committee bill. Because the Ways and Means amendments would exclude much of the spending from the deficit used for purposes of the Balanced Budget Act, the deficit for such purposes would be reduced by $49.2 billion over the six-year period by these amendments.

BASIS OF ESTIMATE

The costs or savings discussed in the letter and shown in the attached tables represent the changes resulting from the Ways and Means Committee's amendments, and do not indicate the total budgetary effect of H.R. 1278 if the amendments are adopted.

Tax provisions

The Ways and Means Committee amendments to H.R. 1278 are expected to result in an increase in federal tax receipts relative to the version reported by the House Committee on Banking, Finance, and Urban Affairs, according to estimates provided by the Joint Committee on Taxation. If an assisted merger arranged by the Federal Deposit Insurance Corporation (FDIC) is contractually finalized by December 31, 1989, the multiyear assistance payments to the acquirer qualify for preferential treatment under the current tax code. By repealing this preferential treatment for all mergers not finalized before May 10, 1989, the amendment is expected to raise $0.8 billion in revenues in fiscal year 1990, and nearly $3 billion over the period from 1989 through 1994.

At the same time, the FDIC will need to provide more assistance to acquirers of insolvent financial banks and thrifts in calendar year 1989 because of the loss of this preferential tax treatment. We expect that the additional costs of case resolutions will be an estimated $1.5 billion over the 1989–1991 period. Taking into account both the revenue gains and the additional outlays, the repeal would have a net effect of reducing the deficit by about $1.5 billion over the 1989–1994 period.

FHLB contributions

H.R. 1278, as reported by the House Banking Committee, would require the FHLBs to make annual contributions to REFCORP of 20 percent of net income, or $300 million, whichever is less. The Ways and Means amendments would set the contribution at $300 million annually and would index it to inflation beginning in 1993. As a result, CBO expects that the additional payments from the FHLB will total $0.6 billion over the 1989–1994 period.

Cost of REFCORP borrowing

The Ways and Means amendments to H.R. 1278 require that REFCORP borrow from the Treasury, rather than sell bonds in the financial markets. This would reduce government costs, because the Treasury borrowing rates would be lower than the yields the market would require on less secure and less liquid REFCORP debt instruments. CBO estimates that interest costs would be lower by 40 basis points in 1989, 35 basis points in 1990, and 30 basis points in 1991, than under the House Banking Committee version. This

would reduce Treasury payments for interest costs by an estimated $0.7 billion through 1994, and by about $5 billion over 30 years.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mary Maginniss, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

TABLE 1.—BUDGET IMPACT OF WAYS AND MEANS COMMITTEE AMENDMENTS TO H.R. 1278, RELATIVE TO THE VERSION REPORTED BY THE HOUSE BANKING COMMITTEE AND ASSUMING THAT THE FUNDING CORPORATION (REFCORP) IS OFF-BUDGET UNDER THE BANKING COMMITTEE BILL

[By fiscal year, in billions of dollars]

	1989	1990	1991	1992	1993	1994
Repeal of tax provisions:						
Deficit effect of revenue changes	−0.6	−0.8	−0.6	−0.4	−0.3	−0.2
Deficit effect of outlay changes	.6	.6	.3			
Net deficit effect from repeal	(1)	−.3	−.3	−.4	−.3	−.2
Increased Federal Home Loan Bank contributions			−.5	(1)	(1)	(1)
REFCORP on-budget	9.3	23.3	13.8			
Reduced Treasury interest payments		(1)	−.1	−.2	−.2	−.2
Subtotal—effect on unified budget deficit	9.3	23.0	12.8	−.5	−.5	−.4
Exclusion for Balanced Budget Act	−9.3	−23.3	−13.8			
Total—Effect on deficit for Balanced Budget ACt	(1)	−.3	−1.0	−.5	−.5	−.4

[1] Less than $50,000,000.

TABLE 2.—BUDGET IMPACT OF WAYS AND MEANS COMMITTEE AMENDMENTS TO H.R. 1278, RELATIVE TO THE VERSION REPORTED BY THE HOUSE BANKING COMMITTEE AND ASSUMING THAT THE FUNDING CORPORATION (REFCORP) IS ON-BUDGET UNDER THE BANKING COMMITTEE BILL

[By fiscal year, in billions of dollars]

	1989	1990	1991	1992	1993	1994
Repeal of tax provisions:						
Deficit effect of revenue changes	−0.6	−0.8	−0.6	−0.4	−0.3	−0.2
Deficit effect of outlay changes	.6	.6	.3			
Net deficit effect from repeal	(1)	−.3	−.3	−.4	−.3	−.2
Increased Federal Home Loan Bank contributions			−.5	(1)	(1)	(1)
Reduced Treasury interest payments		(1)	−.1	−.2	−.2	−.2
Subtotal—effect on unified budget deficit	(1)	−.3	−1.0	−.5	−.5	−.4
Exclusion for Balanced Budget Act	−9.3	−23.3	−13.8			
Total—effect on deficit for Balanced Budget Act	−9.3	−23.6	−14.8	−.5	−.5	−.4

[1] Less than $50,000,000.

OVERSIGHT BY COMMITTEE ON GOVERNMENT OPERATIONS

With no respect to subdivision (D) of clause 2(l)(3), the committee advises that no oversight findings or recommendations have been submitted to the Committee on Ways and Means by the Committee on Government Operations regarding the subject of the committee amendments.

INFLATIONARY IMPACT

In compliance with clause 2(l)(4), the committee states that the enactment of the committee amendments to the bill will reduce the overall interest costs to the Federal Government by placing the Federal borrowing for the rescue of the savings and loans institutions "on budget" rather than "off budget" (as in the bill as reported by the Committee on Banking, Finance, and Urban Affairs).

The tax provisions of the committee amendment are not expected to have a significant impact on prices and costs in the operation of the national economy.

V. ADDITIONAL VIEWS OF HON. BILL ARCHER, HON. GUY VANDER JAGT, HON. PHILIP M. CRANE, HON. BILL FRENZEL, HON. DICK SCHULZE, HON. WILLIAM M. THOMAS, HON. HANK BROWN, HON. ROD CHANDLER, HON. E. CLAY SHAW, HON. DON SUNDQUIST, AND HON. NANCY L. JOHNSON

When President Bush presented his solution to the Savings and Loan crisis in early February, he stressed the need for Congress to act quickly on the legislation. We have worked diligently with our counterparts in the majority to expedite our Committee's consideration of those matters under its jurisdiction.

While we are pleased that the Committee has completed its work quickly, we take issue with its rejection of the Administration's financing mechanism in favor or an approach which severely weakens our one vestige of budgetary sanity—the Gramm-Rudman Act.

The Committee's decision represents a major breach in the Gramm-Rudman Act by exempting $46 billion in Resolution Funding Corporation (REFCORP) outlays from the deficit calculations. We share the Treasury Department's fear that the financial markets and our trading partners will also see the Committee's action as a blow to fiscal restraint.

Should interest rates rise in reaction, the resulting increase in overall federal debt service costs will obliterate the $125 million of annual savings the Committee claims it will achieve from direct Treasury borrowing. That supposed savings would not begin to offset the estimated $280 million a year in increased debt service costs that would result from even a single basis point increase in interest rates.

The Committee's action tells us that henceforth Congress will keep many sets of budget books. Already, by law, the social security funds are "off-budget," but for Gramm-Rudman purposes the social security reserves lower the deficit.

In the Committee's REFCORP scheme, we go the other way, because it is the convenient thing to do. The Committee amendment brings REFCORP "on-budget," but removes the costs from the deficit total.

Once started, we wonder where this bookkeeping of convenience approach to the federal budget will end—and at what cost to the taxpayer. The Committee's financing scheme in H.R. 1278 provides the keys to the Treasury that the advocates of higher spending have been seeking. New programs with exceptions, exemptions and waivers of budgetary restrictions will become the order of the day. The practical result will have to be to make Gramm-Rudman deficit targets meaningless.

The Committee's funding approach also will inevitably delay enactment of the bill at a time when the losses in the thrift industry are piling up at a rate of $1 billion per month. Numerous obstacles

to prompt consideration of the legislation now block Congress' path.

We anticipate a separate vote on the alternative funding mechanisms when the measure reaches the House floor. If the majority in the House pursues a partisan commitment to the Committee's financing plan, previous time will be lost in conference fighting over the House method and the Senate bill which specifically ratified the Administration's financing in a separate floor vote.

Importantly, even if the Committee's approach is adopted in conference, the bill faces an enormous legislative hurdle in the Senate—the requirement of a 60 vote majority to waive the Budget Act. Finally, a veto of the bill—if the President chooses to exercise that power because of the Committee's financing scheme—could delay enactment of the legislation for several months. Each day H.R. 1278 is delayed, represents an additional $30 million to $40 million cost to the thrift industry and to the taxpayers of this nation.

We urge our colleagues in the House to guard zealously the only remaining element of fiscal discipline and reject the Ways and Means Committee financing approach when the bill goes to the floor. Selecting the Administration's financing method will move the FSLIC bill closer to enactment and reaffirm Congress' commitment to Gramm-Rudman discipline.

BILL ARCHER.
GUY VANDER JAGT.
PHILIP M. CRANE.
BILL FRENZEL.
DICK SCHULZE.
WILLIAM M. THOMAS.
HANK BROWN.
ROD CHANDLER.
E. CLAY SHAW.
DON SUNDQUIST.
NANCY JOHNSON.

VI. ADDITIONAL VIEWS OF HON. BILL FRENZEL

Much of the Committee's debate on the question of putting REFCOR bonds on or off budget centered around the issue of "truth in budgeting". The view was expressed on several occasions that simply designating borrowing as "on-budget", regardless of whether usual budget disciplines apply, is somehow more "honest" than off-budget borrowing. Discussions in our Committee proved that view to be fundamentally misleading.

The two main options—the President's proposal for off-budget borrowing by a Government Sponsored Enterprise (GSE), and on-budget borrowing exempt from Gramm-Rudman—are equally devious forms of budget gimmickry. Debate on the merits of these two solutions should not be clouded by assertions of what constitutes "budget morality". Neither of these options is clean. Both were designed to evade the strictures of Gramm-Rudman sequesters.

We were presented with one option—the Gibbons Amendment to borrow on-budget and on Gramm Rudman—which did offer honesty. This amendment was soundly defeated. We are left instead with a solution which boldly puts REFCOR borrowing on budget, but then excludes it from deficit calculations. The triple exclusion takes it out of the President's Budget, the Budget Resolution, and GRH sequestration. This contrasts with the Social Security Trust Fund which is off-budget but is included in every budget calculation. We may have achieved "irony in budgeting" but certainly not "truth in budgeting".

Advocates of an on-budget, off-GRH solution would like to claim to be saving the taxpayers $125 million per year in reduced interest payments on REFCOR bonds. The calculation is simple. One need only assume that Treasury borrowing is 25 basis points cheaper.

This assertion ignores, however, the potential impact on overall interest rates if financial markets perceive that the GRH law has been permanently compromised. The assertion is based on half of the Treasury assumptions. It accepts the extra basis points, and rejects mistakenly, the Treasury's claim that the exclusion from Gramm-Rudman will raise interest costs on the entire short term debt of the U.S. government.

Gramm-Rudman, while imperfect, is our last firewall against runaway federal borrowing. If, in light of the first Gramm-Rudman waiver, the markets perceive the likelihood of more waivers in the future, they will compensate by raising current rates. Even a minute (1 basis point) increase in the overall cost of servicing our national debt would far outweigh the savings expected form putting REFCOR bonds on-budget.

The markets fear a precedent that would allow every large, new federal spending initiative to exact a Gramm-Rudman waiver. To simply state that the S&L crisis is a "unique situation" not to be

replicated, does not preclude repeat performances. Cleaning up our nuclear weapons facilities will seem equally "unique", and will be equally prone to a GRH waiver. Congress loves emergencies. It even loves dire emergencies. It will surely discover more of them.

There are unique characteristics of the S&L rescue which would allow us to set up barriers to future mischief. The healthy portion of the thrift industry will be paying 30% of the total cost of the bailout. This situation is not likely to be repeated in other types of spending initiatives.

In an on-budget solution, the industry contribution is incidental to the Gramm-Rudman waiver. Future spenders would not need to have private sector contributions in order to sight Congressional precedent. In an off-budget, GSE solution, zero coupon bonds, bought with private funds, are needed to make the funding plan work. An off-budget solution sets a less easily replicated, and thus less dangerous precedent.

The Ways and Means Committee decision to adopt an on-budget borrowing plan contrary to the President's FSLIC proposal, the House Banking Committee bill, and the Senate bill, may result in costly delays. Those delays could be in the Senate, in Conference, or as the result of a veto. Insolvent, but still operating, S&Ls are incurring liabilities of as much as $1 billion per month. At this rate of loss, a delay of even a few weeks negates any possible savings from on-budget borrowing.

The Secretary of the Treasury has said that he will recommend a veto if an on-budget plan waiving Gramm-Rudman is included in the FSLIC bill. A Senate point of order, requiring a 60-vote majority to reject, will also arise if REFCOR bonds increase the budget deficit. Given these obstacles, it seems unwise to engage in an extended legislative battle which will only end up costing the taxpayers.

We are faced with the unpalatable decision of choosing between backdoor methods of paying for a bailout that probably should not have been necessary. I believe that both sides of this issue share the desire to save taxpayer money. We must resolve this issue, without delay, in the way that poses the least risk of long term cost to the taxpayer. That way is the proposal of the Treasury Department.

BILL FRENZEL.

VII. ADDITIONAL VIEWS OF HON. BILL GRADISON

Within its narrow jurisdiction, the Ways and Means Committee had acted responsibly on this legislation. In particular, I am proud to associate myself with the majority position of insisting that the financing for the savings and loan bailout be on-budget and off-Gramm-Rudman. To be sure, this is a small improvement in an otherwise regrettable bill, but it is an improvement.

In these Views, I want to address directly the arguments that have been put forth in defense of off-budget, off-Gramm-Rudman financing.

Proponents of off-budget, off-Gramm-Rudman financing and accounting argue that putting the bailout on budget would send a bad signal to the capital markets, not that putting it off-budget would fool the capital markets, but rather that by waiving Gramm-Rudman, the on-budget approach would signal a lack of will on the part of the Congress to reduce the deficit. This seems to be their strongest argument.

My answer is this: Gramm-Rudman is waived in either case. The only difference is that in the off-budget plan, Gramm-Rudman is waived *implicitly,* whereas in the on-budget plan Gramm-Rudman is waived explicitly. As I said during the Committee's conceptual markup, we can go through the front door (on-budget) or through the back-door (off-budget). The borrowing requirements are the same in either case, and on-budget Treasury borrowing is less expensive.

The impact of the required borrowing is already reflected in current interest rates. The markets have registered their response to the Committee's action, and it is just as one would expect—too small to identify if there is any. Importantly, this market response fully reflects not only the change in financing (off- to on-budget) but also the explicit waiver of Gramm-Rudman (vs. the implicit waiver with off-budget financing).

I believe Gramm-Rudman has generally been helpful in reducing deficits from what they otherwise would be. But I am willing to acknowlege the plausibility that our "progress" to date would have been achieved anyway simply because the deficits were too high in a political sense—that the deficits per se would have led us to the same place, or nearly so, without Gramm-Rudman. If high deficits per se, rather than formula approaches such as Gramm-Rudman, are what really drive us to reduce deficits, that alone argues for putting the bailout on-budget.

I now turn briefly to the other principal arguments made by proponents of off-budget financing. To imply, as they have, that somehow the on-budget approach is more expensive and would result in higher interest rates than off-budget financing simply defies logic. The higher cost of the off-budget plan arises directly from the off-budget, non-Treasury borrowing. To the best of my knowledge, and while the estimates vary, the higher cost of off-budget financing

has been acknowledged by every expert who has examined and reported on the issue, including the Treasury and the FED.

Off-budget, off-Gramm-Rudman proponents further argue that changing the budgetary treatment will cause a costly delay. It is possible that such a change could prolong the debate, and the debate could be prolonged by a veto threat and certainly by an actual veto. Without question, the principal reason this mess has reached its present state is because of delay from several quarters over several years. But there is no reason why a change for the better in the financing and budget accounting of the legislation need cause any delay. And even if there were a delay, the added cost caused by the delay could be more than offset by the less costly on-budget treatment. Moreover, if the goal is to shut down insolvent thrifts as soon as possible, then the fastest way to get the money to do the job is for Treasury to raise the money.

Finally, the argument has been made that only off-budget accounting and financing will ensure the fullest contribution from the savings and loan industry. This is a most unpersuasive argument. Quite routinely, we collect Superfund taxes from specified industries, and we collect numerous other revenues, whether they be called special assessments, taxes, user fees, or premiums, which are dutifully and efficiently recorded off-budget.

Unfortunately, this financial accounting question is emerging as a partisan political issue. Yet, by the large the debate has been kept on a substantive level. I do not question the sincerity and conviction of those advocating off-budget, off-Gramm-Rudman accounting. I simply disagree.

My bottom line is this: I want the best deal for the taxpayer. They deserve nothing less from us. Off-budget, off-Gramm-Rudman financing imposes a wholly unnecessary cost of at least $4.5 billion on the taxpayer (to use Treasury's estimate), and the arguments for doing so are very weak. This Member will not be put in the position of having to explain to his constituents why he voted for the more expensive plan.

BILL GRADISON.

VIII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED—PART 1

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter A—Determination of Tax Liability

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PART III—CORPORATE ORGANIZATIONS AND REORGANIZATIONS

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Subpart D—Special Rule; Definitions

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SEC. 368. DEFINITIONS RELATING TO CORPORATE REORGANIZATIONS.

(a) REORGANIZATION—

(1) * * *

* * * * * * *

(3) ADDITIONAL RULES RELATING TO TITLE 11 AND SIMILAR CASES.—

(A) * * *

* * * * * * *

[(D) AGENCY PROCEEDINGS WHICH INVOLVE FINANCIAL INSTITUTIONS.—

[(i) For purpose of subparagraphs (A) and (B)—

[(I) In the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution to which section 585 applies, the agency shall be treated as a court, and

[(II) In the case of a financial institution to which section 593 applies, the term "title 11 or similar case" means only a case in which the Board (which will be treated as the court in such case) makes the certification described in clause (ii).

[(ii) A transaction otherwise meeting the requirements of subparagraph (G) of paragraph (1), in which the transferor corporation is a financial institution to which section 593 applies, will not be disqualified as a reorganization if no stock or securities of the corporation to which the assets are transferred (transferee) are received or distributed, but only if all of the following conditions are met:

[(I) the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met with respect to the acquisition of the assets,

[(II) substantially all the liabilities of the transferor immediately before the transfer become, as a result of the transfer, liabilities of the transferee, and

[(III) the Board certifies that the grounds set forth in section 1464(d)(6)(A)(i)(ii), or (iii) of the title 12, United States Code, exist with respect to the transferor or will exist in the near future in the absence of action by the Board.

[(iii) For purpose[s] of this subparagraph, the "Board" means the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation or, if neither has supervisory authority with respect to the transferor, the equivalent State authority.

[(iv) In the case of a financial institution to which section 585 applies—

[(I) the term "title 11 or similar case" means only a case in which the applicable authority (which shall be treated as the court in such case) makes the certification described in subclause (II), and

[(II) clause (ii) shall apply to such institution, except that for purposes of clause (ii)(III), the applicable authority must certify that the grounds set forth in such clause (modified in such manner as the Secretary determines necessary because such institution is not an institution to which section 593 applies) exist with respect to such transferor or will exist in the near future in the absence of action by the applicable authority.

For purposes of this clause, the term "applicable authority" means the Comptroller of the Currency or the Federal Deposit Insurance Corporation, or if neither has the supervisory authority with respect to the transfer, the equivalent State authority.

[(v) For purposes of this subparagraph, in applying section 593, the determination as to whether a corpo-

ration is a domestic building and loan association shall be made without regard to section 7701(a)(19)(C).]

(D) AGENCY RECEIVERSHIP PROCEEDINGS WHICH INVOLVE FINANCIAL INSTITUTIONS.—For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution referred to in section 581 or 591, the agency shall be treated as a court.

* * * * * * *

PART V—CARRYOVERS

* * * * * * *

SEC. 382. LIMITATION ON NET OPERATING LOSS CARRYFORWARDS AND CERTAIN BUILT-IN LOSSES FOLLOWING OWNERSHIP CHANGE.

(a)* * *

* * * * * * *

(l) CERTAIN ADDITIONAL OPERATING RULES.—For purposes of this section—

(1)* * *

* * * * * * *

(5) TITLE 11 OR SIMILAR CASE.—

(A)* * *

* * * * * * *

(F) SPECIAL RULE FOR CERTAIN FINANCIAL INSTITUTIONS.—

(i) IN GENERAL.—In the case of any ownership change to which this subparagraph applies, this paragraph shall be applied—

(I) by substituting "1504(a)(2)(B)" for "1504(a)(2)" and "20 percent" for "50 percent" in subparagraph (A)(ii), and

(II) without regard to subparagraphs (B) and (C).

(ii) SPECIAL RULE FOR DEPOSITORS.—For purposes of applying this paragraph to an ownership change to which this subparagraph applies—

(I) a depositor in the old loss corporation shall be treated as a stockholder in such loss corporation immediately before the change,

(II) deposits which, after the change, become deposits of the new loss corporation shall be treated as stock of the new loss corporation, and

(III) the fair market value of the outstanding stock of the new loss corporation shall include the amount of deposits in the new loss corporation immediately after the change.

(iii) CHANGES TO WHICH SUBPARAGRAPH APPLIES.—This subparagraph shall apply to—

(I) an equity structure shift which is a reorganization described in section 368 (a)(3)(D)(ii) (as modified by section 368(a)(3)(D)(iv)), or

(II) any other equity structure shift (or transaction to which section 351 applies) which occurs as an integral part of a transaction involving a change to which subclause (I) applies.

[This subparagraph shall not apply to any equity structure shift or transaction occuring after December 31, 1989] *on or after May 10, 1989.*

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Subchapter F—Exempt Organizations

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PART I—GENERAL RULE

* * * * * * *

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a)* * *

* * * * * * *

[(l) GOVERNMENT CORPORATIONS EXEMPT UNDER SUBSECTION (c)(1).—The organization described in this subsection is the Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).]

(l) GOVERNMENT CORPORATIONS EXEMPT UNDER SUBSECTION (c)(1).—For purposes of subsection (c)(1), the following organizations are described in this subsection:

(1) The Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).

(2) The Resolution Trust Corporation established under section 21A of the Federal Home Loan Bank Act.

(3) The Resolution Funding Corporation established under section 21B of the Federal Home Loan Bank Act.

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Subchapter H—Banking Institutions

* * * * * * *

PART II—MUTUAL SAVINGS BANKS, ETC.

Sec. 591. Deduction for dividends paid on deposits.
Sec. 593. Reserves for losses on loans.
Sec. 594. Alternative tax for mutual savings banks conducting life insurance business.
Sec. 595. Foreclosure on property securing loans.
Sec. 596. Limitation on dividends received deduction.
[Sec. 597. FSLIC financial assistance.
Sec. 597. Treatment of transactions in which Federal financial assistance provided.

SEC. 593. RESERVES FOR LOSSES ON LOANS.

(a)* * *

* * * * * * *

(e) DISTRIBUTIONS TO SHAREHOLDERS.—

(1) IN GENERAL.—For purposes of this chapter, any distribution of property (as defined in section 317(a)) by a domestic building and loan association or an institution that is treated as a mutual savings bank under section 591(b) to a shareholder with respect to its stock, if such distribution is not allowable as a deduction under section 591, shall be treated as made—

(A) first out of its earnings and profits accumulated in taxable years beginning after December 31, 1951, to the extent thereof,

(B) then out of the reserve for losses on qualifying real property loans, to the extent additions to such reserve exceed the additions which would have been allowed under subsection (b)(3),

(C) then out of the supplemental reserve for losses on loans, to the extent thereof,

(D) then out of such other accounts as may be proper.

This paragraph shall apply in the case of any distribution in redemption of stock or in partial or complete liquidation of the association or an institution that is treated as a mutual savings bank under section 591(b), except that any such distribution shall be treated as made first out of the amount referred to in subparagraph (B), second out of the amount referred to in subparagraph (C), third out of the amount referred to in subparagraph (A), and then out of such other accounts as may be proper. [This paragraph shall not apply to any transaction to which section 381 (relating to carryovers in certain corporate acquisitions) applies, or to any distribution to the Federal Savings and Loan Insurance Corporation in redemption of an interest in an association, if such interest was originally received by the Federal Savings and Loan Insurance Corporation in exchange for financial assistance pursuant to section 406(f) of the National Housing Act (12 U.S.C. sec. 1729(f)).] *This paragraph shall not apply to any transaction to which section 381 applies, or to any distribution to the Federal Savings and Loan Insurance Corporation (or any successor thereof) or the Federal Deposit Insurance Corporation in redemption of an interest in an association, if such interest was originally received by any such entity in exchange for assistance provided under a provision of law referred to in section 597(b).*

* * * * * * *

[SEC. 597. FSLIC FINANCIAL ASSISTANCE.

[(a) EXCLUSION FROM GROSS INCOME.—Gross income of a domestic building and loan association does not include any amount of money or other property received from the Federal Savings and Loan Insurance Corporation pursuant to section 406(f) of the National Housing Act (12 U.S.C. 1729(f)), regardless of whether any note or other instrument is issued in exchange therefor. Gross income of a bank does not include any amount of money or other property received from the Federal Deposit Insurance Corporation pursuant to sections 13(c), 15(c)(1), and 15(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f) and 1823(c)(1) and (c)(2)), regardless of whether any note or other instrument is issued in exchange therefor.

[(b) NO REDUCTIONS IN BASIS OF ASSETS.—No reduction in the basis of assets of a domestic building and loan association or bank shall be made on account of money or other property received under the circumstances referred to in subsection (a).

[(c) REDUCTION OF TAX ATTRIBUTES BY 50 PERCENT OF AMOUNTS EXCLUDABLE UNDER SUBSECTION (a).—

[(1) IN GENERAL.—50 percent of any amount excludable under subsection (a) for any taxable year shall be applied to reduce the tax attributes of the taxpayer as provided in paragrah (2).

[(2) TAX ATTRIBUTES REDUCED; ORDER OF REDUCTIONS.—The reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

[(A) NOL.—Any pre-assistance net operating loss for the taxable year.

[(B) INTEREST.—The amount of any interest with respect to which a deduction is allowable for the taxable year.

[(C) BUILT-IN PORTFOLIO LOSSES.—Recognized built-in portfolio losses for the taxable year.

[(3) PRE-ASSISTANCE NET OPERATING LOSS.—For purposes of paragraph (2)(A)—

[(A) IN GENERAL.—The pre-assistance net operating loss shall be determined in the same maner as a pre-change loss under section 382(d), except that—

[(i) the applicable financial institution shall be treated as the old loss corporation, and

[(ii) The determination date shall be substituted for the change date.

[(B) ORDERING RULE.—The reduction under paragraph (2)(A) shall be made in the carryovers in the order in which carryovers are taken into account under this chapter for the taxable year.

[(4) RECOGNIZED BUILT-IN PORTFOLIO LOSSES.—For purposes of paragraph (2)(C), recognized built-in portfolio losses shall be determined in the same manner as recognized built-in losses under section 382(h), except that—

[(A) the only assets taken in to account shall be—

[(i) the loan portfolio,

[(ii) marketable securities (within the meaning of section 453(f)(2)), and

[(iii) property described in section 595(a).

[(B) the rules of clauses (i) and (ii) of paragraph (3)(A) shall apply,

[(C) there shall be no limit on the number of years in the recognition period, and

[(D) section 382(h) shall be applied without regard to paragraph (3)(B) thereof.

[(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

[(A) APPLICABLE FINANCIAL INSTITUTION.—The term "applicable financial institution" means the domestic buiding and loan association or bank the financial condition of which was determined by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance

Corporation to require the financial assistance described in subsection (a).

[(B) DETERMINATION DATE.—The term "determination date" means the date of the determination under subparagraph (A). Except as provided by the Secretary, any subsequent revision or modification of such determination shall be treated as made on the original determination date.

[(C) TAXABLE ASSET ACQUISITIONS.—

[(i) IN GENERAL.—In the case of any acquisition of the assets of any applicable financial institution to which section 381 does not apply—

[(I) paragraph (1) shall not apply to any amounts excludable under subsection (a) which are payments made at the time of the acquisition to the person acquiring such assets, and

[(II) rights to receive future payments excludable under subsection (a) in connection with the acquisition shall be treated as provided in clause (ii).

[(ii) TREATMENT OF FUTURE PAYMENTS.—

[(I) IN GENERAL.—Rights to receive future payments described in clause (i)(II) shall be treated as assets to which basis is allocated.

[(II) RECOVERY OF BASIS.—Any basis allocated under subclause (I) shall be recovered in such manner as the Secretary may provide, but in no event shall the amount recovered for any taxable year beginning before the taxable year in which the rights expire exceed the aggregate payments received with respect to such rights for all taxable years reduced by the amount of basis with respect to such rights in preceding taxable years.

[(III) APPLICATION OF PARAGRAPH (1).—Paragraph (1) shall apply to payments described in subclause (I) in a taxable year only to the extent such payments exceed the amount of basis recovered in such taxable year.

[(D) TREATMENT OF REPAYMENTS.—If a taxpayer repays an amount to which paragraph (1) applied in a preceding taxable year, there shall be allowed as a deduction for the taxable year of repayment an amount equal to the reduction in tax attributes under paragraph (1) attributable to the amount repaid.

[(E) CARRYOVERS.—If 50 percent of the amount excludable under subsection (a) for any taxable year exceeds the amount of the tax attributes described in paragraph (2) for such taxable year, then, for purposes of this subsection, the amount excludable under subsection (a) for the succeeding taxable year shall be increased by an amount equal to twice the amount of such excess.

[(F) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection.]

SEC. 597. TREATMENT OF TRANSACTIONS IN WHICH FEDERAL FINANCIAL ASSISTANCE PROVIDED.

(a) GENERAL RULE.—The treatment for purposes of this chapter of any transaction in which Federal financial assistance is provided with respect to a bank or domestic building and loan association shall be determined under regulations prescribed by the Secretary.

(b) PRINCIPLES USED IN PRESCRIBING REGULATIONS.—

(1) TREATMENT OF TAXABLE ASSET ACQUISITIONS.—In the case of any acquisition of assets to which section 381(a) does not apply, the regulations prescribed under subsection (a) shall—

(A) provide that Federal financial assistance shall be properly taken into account by the institution from which the assets were acquired, and

(B) provide the proper method of allocating basis among the assets so acquired (including rights to receive Federal financial assistance).

(2) OTHER TRANSACTIONS.—In the case of any transaction not described in paragraph (1), the regulations prescribed under subsection (a) shall provide for the proper treatment of Federal financial assistance and appropriate adjustments to basis or other tax attributes to reflect such treatment.

(3) DENIAL OF DOUBLE BENEFIT.—No regulations prescribed under this section shall permit the utilization of any deduction (or other tax benefit) if such amount was in effect reimbursed by nontaxable Federal financial assistance.

(c) FEDERAL FINANCIAL ASSISTANCE.—The purposes of this section, the term "Federal financial assistance" means—

(1) any money or other property provided with respect to a domestic building and loan association by the Federal Savings and Loan Insurance Corporation or the Resolution Trust Corporation pursuant to section 406(f) of the National Housing Act or section 21A of the Federal Home Loan Bank Act (or under any other similar provision of law), and

(2) any money or other property provided with respect to a bank or domestic building and loan association by the Federal Deposit Insurance Corporation pursuant to sections 13(c), 15(c)(1), and 15(c)(2) of the Federal Deposit Insurance Act (or under any other similar provision of law),

regardless of whether any note or other instrument is issued in exchange therefor.

(d) DOMESTIC BUILDING AND LOAN ASSOCIATION.—For purposes of this section, the term "domestic building and loan association" has the meaning given such term by section 7701(a)(19) without regard to subparagraph (C) thereof.

* * * * * * *

SECTION 904 OF THE TAX REFORM ACT OF 1986

[SEC. 904. REPEAL OF SPECIAL REORGANIZATION RULES FOR FINANCIAL INSTITUTIONS.

[(a) GENERAL RULE.—Subparagraph (D) of section 368(a)(3) (relating to agency receivership proceedings which involve financial institutions) is amended to read as follows:

[''(D) AGENCY RECEIVERSHIP PROCEEDINGS WHICH INVOLVE FINANCIAL INSTITUTIONS.—For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution referred to in section 581 or 591, the agency shall be treated as a court.''

[(b) REPEAL OF SPECIAL TREATMENT FOR FSLIC FINANCIAL ASSISTANCE.—

[(1) Section 597 (relating to FSLIC financial assistance) is hereby repealed.

[(2) The table of sections for part II of subchapter H of chapter 1 is amended by striking out the item relating to section 597.

[(c) EFFECTIVE DATES.—

[(1) SUBSECTON (a).—The amendments made by subsection (a) shall apply to acquisitions after December 31, 1988, in taxable years ending after such date.

[(2) SUBSECTION (b).—

[(A) IN GENERAL.—The amendments made by subsection (b) shall apply to transfers after December 31, 1988, in taxable years ending after such date; except that such amendments shall not apply to transfers after such date pursuant to an acquisition to which the amendments made by subsection (a) do not apply.

[(B) CLARIFICATION OF TREATMENT OF AMOUNTS EXCLUDED UNDER SECTION 597.—Section 265(a)(1) of the Interanl Revenue Code of 1986 (as amended by this title) shall not deny any deduction by reason of such deduction being allocable to amounts excluded from gross income under section 597 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act).]

SECTION 4012 OF THE TECHNICAL AND MISCELLANEOUS REVENUE ACT OF 1988

SEC. 4012. EXTENSION AND MODIFICATIONS OF PROVISIONS RELATING TO FINANCIAL INSTITUTIONS.

(a) * * *

* * * * * * *

(c) CERTAIN TAX ATTRIBUTES REDUCED BY 50 PERCENT OF FINANCIAL ASSISTANCE OF FSLIC AND FDIC; APPLICATION OF SECTION 265.—

(1) * * *

* * * * * * *

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to any transfer—

(A) after December 31, 1988, and before January 1, 1990, unless such transfer is pursuant to an acquisition occurring before January 1, 1989, and

(B) after December 31, 1989, if such transfer is pursuant to an acquisition occurring after December 31, 1988, and before January 1, 1990.

[In the case of a taxpayer to which the amendments made by subsection (b)(1) apply, subparagraphs (A) and (B) shall be applied by subsituting "the date of the enactment of this Act" for "December 31, 1988".] *In the case of any bank or any institution treated as a domestic building and loan association for purposes of section 597 of the 1986 Code by reason of the amendment made by subsection (b)(2)(B), the amendments made by this subsection shall also apply to any transfer before January 1, 1989, to which the amendments made by subsection (b)(2) apply.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED—PART 2

The bill was referred to this Committee for consideration of such provisions of the bill, and the amendment reported by the Committee on Banking, Finance and Urban Affairs, as fall within the jurisdiction of this Committee pursuant to clause (1)(v) of Rule X of the Rules of the House of Representatives. The changes made to existing law by the amendment reported by the Committee on Banking, Finance and Urban Affairs are shown in the supplemental report filed by that Committee.

For the information of the Members of the House of Representatives, changes made by this Committee to existing law as amended by the Committee on Banking, Finance and Urban Affairs are shown as follows (matter proposed to be omitted is enclosed in black brackets, new matter is printed in italic, matter in which no change is proposed is shown in roman):

AMENDMENT NUMBER 1

SECTION 15 OF THE FEDERAL DEPOSIT INSURANCE ACT

SEC. 15. *(a) GENERAL RULE.*—All notes, debentures, bonds or other such obligations issued by the Corporation shall be exempt, both as to principal and interest, from all taxation (except estate and inheritance taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority: *Provided,* That interest upon or any income from any such obligations and gain from the sale or other disposition of such obligations shall not have any exemption, as such, and loss from the sale or other disposition of such obligations shall not have any special treatment, as such, under the Internal Revenue Code, or laws amendatory or supplementary thereto. The Corporation, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

[SEC. 15. EXEMPTION FROM TAXATION; LIMITATION ON BORROWING.

[(a) OBLIGATIONS OF THE CORPORATION.—Except as provided in section 4 of the Public Debt Act of 1941, all notes, debentures, bonds, or other such obligations issued by the Corporation shall be exempt, both as to principal and interest, from all taxation (except estate and inheritance taxes) now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.]

(b) When acting as receiver for a national bank, a branch of a foreign bank, or a savings association (but not as a receiver of a State bank under State law), the following provisions shall apply with respect to the Corporation:

(1) The Corporation including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation now or hereafter imposed by [the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real] *any State, county, municipality, or local taxing authority, except that any real* property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of such property's value, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed.

(2) No property of the Corporation shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Corporation, nor shall any involuntary lien attach to the property of the Corporation.

(3) The Corporation shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

This subsection shall not apply with respect to any tax imposed (or other amount arising) under the Internal Revenue Code of 1986.

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SECTIONS 21A AND 21B OF THE FEDERAL HOME LOAN BANK ACT

SEC. 21A. RESOLUTION TRUST CORPORATION ESTABLISHED.

(a) * * *

* * * * * * *

[(m) EXEMPTION FROM TAXATION—The Corporation, the capital, reserves, surplus, and assets of the Corporation, and the income derived from such capital, reserves, surplus, or assets, shall be exempt from Federal, State, municipal, and local taxation except taxes on real estate held by the Resolution Trust Corporation, according to its value as other similar property held by other persons is taxed.]

(m) EXEMPTION FROM STATE AND LOCAL TAXATION.—The Corporation, the capital, reserves, surplus, and assets of the Corporation, and the income derived from such capital, reserves, surplus, or

assets, shall be exempt from State, municipal, and local taxation except taxes on real estate held by the Resolution Trust Corporation, according to its value as other similar property held by other persons is taxed.

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SEC. 21B. RESOLUTION FUNDING CORPORATION ESTABLISHED.

(a)* * *

* * * * * * *

(h) MISCELLANEOUS PROVISIONS RELATING TO THE FUNDING CORPORATION—

(1) TREATMENT FOR CERTAIN PURPOSES.—Except as provided in subsection (f)(7)(B), the Funding Corporation shall be treated as a Federal home loan bank for purposes of [sections 13 and 23] *section 13 (to the extent such section relates to State, municipal, and local taxation) and section 23* of this Act.

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AMENDMENT NUMBER 2

SECTION 21B OF THE FEDERAL HOME LOAN BANK ACT

SEC. 21B. RESOLUTION FUNDING CORPORATION ESTABLISHED.

(a) * * *

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(e) CAPITALIZATION OF THE FUNDING CORPORATION—

(1) * * *

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[(9) AGGREGATE ANNUAL FEDERAL HOME LOAN BANKS CONTRIBUTION—

[(A) IN GENERAL.—Notwithstanding any other provision of this section or section 21 or 21A of this Act, the sum of the supplementary capital and supplementary interest payments by the Federal home loan banks in any year shall not exceed the amount which is equal to the lesser of—

[(i) $300,000,000; or

[(ii) 20 percent of the aggregate net earnings of the Federal home loan banks for such year.

[(B) SUPPLEMENTARY CAPITAL AND SUPPLEMENTARY INTEREST PAYMENTS DEFINED.—For purposes of subparagraph (A):

[(i) SUPPLEMENTARY CAPITAL PAYMENT.—The term "supplementary capital payment" means the sum of the amounts required (in accordance with paragraph (3)(B) of this subsection) to be invested in nonvoting capital stock of the Funding Corporation by each Federal home loan bank under this subsection in excess of the maximum amount limitation established for each such bank under paragraph (3)(A) of this subsection.

[(ii) SUPPLEMENTARY INTEREST PAYMENT.—The term "supplementary interest payment" means the sum of

the amounts required to be contributed by each Federal home loan bank under subsection (f)(3)(C) to the Funding Corporation for interest payments by the Funding Corporation.]

(9) AGGREGATE ANNUAL CAPITAL CONTRIBUTION OF FEDERAL HOME LOAN BANKS.—

(A) AMOUNT REQUIRED.—The sum of the amounts subject to paragraph (3)(B) that are invested by the Federal home loan banks under paragraph (1) shall, for each calendar year for which paragraph (3)(B) applies, equal—

(i) $300,000,000, in the case of a calendar year before 1993; or

(ii) the adjusted dollar amount determined under subparagraph (B), in the case of a calendar year after 1992.

(B) ADJUSTMENT DOLLAR AMOUNT FOR YEARS AFTER 1992.—

(i) IN GENERAL.—The adjusted dollar amount under subparagraph (A)(ii) for any calendar year shall be the sum of—

(I) $300,000,000; and

(II) an amount equal to $300,000,000 multiplied by the inflation adjustment determined under clause (ii).

(ii) INFLATION ADJUSTMENT.—For purposes of clause (i), the inflation adjustment of any calendar year is the percentage (if any) by which—

(I) the consumer price index for the preceding calendar year; exceeds

(II) the consumer price index for calendar year 1991.

(iii) CONSUMER PRICE INDEX.—For purposes of clause (ii), the consumer price index for any calendar year is the average, as of the close of such year, of the last consumer price index for all-urban consumers published by the Department of Labor.

* * * * * * *

(f) OBLIGATIONS OF THE FUNDING CORPORATION.—

(1) ISSUANCE.—The Funding Corporation, subject to the direction of the Resolution Trust Corporation, may issue bonds, notes, debentures, and similar obligations, in an aggregate amount not to exceed $50,000,000,000.

(2) INTEREST PAYMENTS.—The Funding Corporation shall pay the interest due on (and any redemption premium with respect to) such obligations from funds obtained for such interest payments in the manner provided in the following subparagraphs (in the order in which such subparagraphs appear):

(A) * * *

* * * * * * *

(C) SUPPLEMENTARY PAYMENTS BY HOME LOAN BANKS.—To the extent the funds available pursuant to subparagraph (A) and (B) are insufficient to cover the amount of interest

payments, the Federal home loan banks shall pay to the Funding Corporation—

[(i) the aggregate annual amount of $300,000,000; minus]

(i) an aggregate annual amount equal to—

(I) $300,000,000, in the case of a calendar year before 1993; or

(II) the adjusted dollar amount determined under subsection (e)(9)(B), in the case of a calendar year 1992; minus

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AMENDMENT NUMBER 3

SECTION 21A OF THE FEDERAL HOME LOAN BANK ACT

SEC. 21A. RESOLUTION TRUST CORPORATION ESTABLISHED.

(a) * * *

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(e) CORPORATE POWERS.—The Corporation shall have the following powers:

(1) To adopt, alter, and use a corporate seal, which shall be judicially noted.

[(2) REQUIREMENT RELATING TO THE AMOUNT OF CERTIFICATES.—The aggregate amount of the capital certificates issued by

* * * * * * *

(l) CAPITAL CERTIFICATES.—

[(1) AUTHORIZATION TO ISSUE.—Notwithstanding any other provision of law and consistent with the provisions of section 21B of this Act, the Resolution Trust Corporation may issue nonvoting nontransferable capital certificates to the Resolution Funding Corporation.

[(2) REQUIREMENT RELATING TO THE AMOUNT OF CERTIFICATES.—The aggregate amount of the capital certificates issued by the Resolution Trust Corporation under paragraph (1) shall be equal to the aggregate amount of funds provided by the Resolution Funding Corporation to the Resolution Trust Corporation pursuant to section 21B of this Act.

[(3) CERTIFICATES MAY BE ISSUED ONLY TO THE RESOLUTION FUNDING CORPORATION.—The nonvoting nontransferable capital certificates issued under paragraph (1) may be issued only to the Resolution Funding Corporation in the manner and to the extent provided in section 21B of the Federal Home Loan Bank Act and this subsection.

[(4) NO DIVIDENDS.—The Resolution Trust Corpration shall pay no dividends on any capital certificates issued under this paragraph.]

* * * * * * *

SECTION 21B OF THE FEDERAL HOME LOAN BANK ACT

[See the Ramseyer in the supplemental report by the Committee on Banking, Finance and Urban Affairs for the text of section 21B of the Federal Home Loan Bank Act as proposed by that committee.]

SEC. 21B. RESOLUTION FUNDING CORPORATION ESTABLISHED.

(a) STATEMENT OF PURPOSE.—It is the purpose of this section to establish a Resolution Funding Corporation to provide the funds necessary for the Resolution Trust Corporation to carry out its purposes under this Act.

(b) ESTABLISHMENT.—There is hereby created a body corporate to be known as the Resolution Funding Corporation. The Funding Corporation shall be an instrumentality of the Federal Government and shall maintain any offices necessary or appropriate in the conduct of its business.

(c) MANAGEMENT.—

(1) IN GENERAL.—The Funding Corporation shall be subject to the general supervision and direction of the Secretary of the Treasury.

(2) STAFF.—The Funding Corporation shall have no paid employees. The Secretary may, on a reimbursable basis, authorize the officers or employees of the Department of the Treasury to act for and on behalf of the Funding Corporation in the manner necessary to carry out the functions of the Funding Corporation.

(3) ADMINISTRATIVE EXPENSES AND ISSUANCE COSTS.—

(A) IN GENERAL.—All administrative expenses and issuance costs of the Funding Corporation shall be paid by the Federal home loan banks.

(B) PRO RATA DISTRIBUTION.—The amount each Federal home loan bank shall pay shall be determined by the Secretary by multiplying the total administrative expenses and issuance costs for any period by the percentage arrived at by dividing—

(i) the aggregate amount the Secretary required the bank to pay to the Funding Corporation (as of the time of such determination) under paragraphs (3) and (4) of subsection (e) (as computed without regard to paragraphs (2) or (5) of such subsection); by

(ii) the aggregate amount the Secretary required all Federal home loan banks to pay (as of the time of such determination) under such paragraphs.

(d) POWERS.—The Funding Corporation shall have only the following powers, subject to the other provisions of this section and any regulations issued by the Secretary:

(1) REQUIRE PAYMENTS.—To take such actions as may be necessary to collect amounts required to be paid to the Funding Corporation in this section.

(2) TRANSFER FUNDS.—To transfer funds to the Resolution Trust Corporation.

(3) ISSUE OBLIGATIONS.—To issue debentures, bonds, or other obligations to the Secretary and to pay interest on (and any redemption premium with respect to) any such obligation.

(4) IMPOSE ASSESSMENTS.—To impose assessments in accordance with subsection (e)(6).

(5) CORPORATE SEAL.—To adopt, alter, and use a corporate seal.

(6) SUCCESSION.—To have succession until dissolved.

(7) CONTRACTS.—To enter into contracts.

(8) AUTHORITY TO SUE.—To sue and be sued in its corporate capacity, and to complain and defend in any action brought by or against the Funding Corporation in any State or Federal court of competent jurisdiction.

(9) INCIDENTAL POWERS.—To exercise incidental powers which are not inconsistent with this section and are necessary or appropriate to carry out this section.

(e) PAYMENTS BY FEDERAL HOME LOAN BANKS AND OTHERS FOR FUNDING CORPORATION PRINCIPAL FUND.—

(1) IN GENERAL.—

(A) TOTAL AMOUNT REQUIRED.—The Secretary shall ensure that the aggregate of the amounts obtained under this subsection shall be sufficient to permit the total of the face amounts (the amount of principal payable at maturity) of noninterest bearing instruments in the Funding Corporation Principal Fund to be equal to the aggregate amount of principal on the obligations of the Funding Corporation.

(B) PAYMENTS BY FEDERAL HOME LOAN BANKS.—Each Federal home loan banks shall make payments to the Funding Corporation for the Funding Corporation Principal Fund at times and in amounts prescribed by the Secretary.

(2) MAXIMUM PAYMENT LIMITATION FOR EACH FEDERAL HOME LOAN BANK.—The cumulative amount of funds paid to the Funding Corporation by each Federal home loan bank under paragraph (1) shall not exceed the aggregate amount of—

(A) the sum of—

(i) the reserves maintained by the bank on December 31, 1988, pursuant to the reserve requirements contained in section 16 (as in effect on such date); and

(ii) the undivided profits of the bank on such date; minus

(iii) the amounts used as of such date to invest in the capital stock of the Financing Corporation pursuant to the requirement contained in section 21; and

(B) for the period beginning on January 1, 1989, and ending on the later of December 31, 1991, or such date as may be necessary to fund the Funding Corporation Principal Fund pursuant to subsection (g), an aggregate amount equal to—

(i) the sum of—

(I) the amounts added to reserves after December 31, 1988, pursuant to the reserve requirements contained in section 16; and

(II) the undivided profits of the bank accruing after December 31, 1988; minus

(ii) the amounts used to invest in the capital stock of the Financing Corporation after December 31, 1988, pursuant to the requirement contained in section 21.

(3) PRO RATE DISTRIBUTION OF FIRST $1,000,000,000 PAID TO FUNDING CORPORATION BY FEDERAL HOME LOAN BANKS.—With respect to the first $1,000,000,000 of the aggregate which the Chairperson of the directorate of the Financing Corporation pursuant to section 21 or the Secretary under this section (as the case may be) may require the Federal home loan banks to invest in the capital stock of the Financing Corporation under section 21(d) or pay to the Funding Corporation under this subsection, respectively, the amount which each Federal home loan bank (or any successor to the bank) shall invest or pay shall be determined by the Chairperson or the Secretary (as the case may be) by applying to the aggregate amount of such investment or payment by all banks the percentage appearing in the following table for each such bank:

Bank:	*Percentage*
Federal Home Loan Bank of Boston	*1.8629*
Federal Home Loan Bank of New York	*9.1006*
Federal Home Loan Bank of Pittsburgh	*4.2702*
Federal Home Loan Bank of Atlanta	*14.4007*
Federal Home Loan Bank of Cincinnati	*8.2653*
Federal Home Loan Bank of Indianapolis	*5.2863*
Federal Home Loan Bank of Chicago	*9.6886*
Federal Home Loan Bank of Des Moines	*6.9301*
Federal Home Loan Bank of Dallas	*8.8181*
Federal Home Loan Bank of Topeka	*5.2706*
Federal Home Loan Bank of San Francisco	*19.9644*
Federal Home Loan Bank of Seattle	*6.1422*

(4) PRO RATA DISTRIBUTION OF AMOUNTS REQUIRED TO BE PAID IN EXCESS OF $1,000,000,000.—With respect to any amount in excess of the $1,000,000,000 amount referred to in paragraph (3) which the Secretary may require the Federal home loan banks to pay to the Funding Corporation under this subsection, the amount which each Federal home loan bank (or any successor to the bank) shall pay shall be determined by the Secretary by multiplying the excess amount by the percentage arrived at by dividing—

(A) the sum of the total assets (as of the most recent December 31) held by all Savings Association Insurance Fund members (as defined in section 7(l)(5) of the Federal Deposit Insurance Act) which are members of the bank; by

(B) the sum of the total assets (as of such date) held by all Savings Association Insurance Fund members (as defined in section 7(l)(5) of the Federal Deposit Insurance Act) which are members of any Federal home loan bank.

(5) SPECIAL PROVISIONS RELATING TO MAXIMUM AMOUNT LIMITATIONS.—

(A) IN GENERAL.—If the amount any Federal home loan bank is required to pay to the Funding Corporation pursuant to a determination by the Secretary under paragraph (4) (or under subparagraph (B) of this paragraph) exceeds the maximum amount applicable with respect to the bank

under paragraph (2) at the time of such determination (in this paragraph referred to as the "excess amount")—

(i) the Secretary shall require each remaining Federal home loan bank to pay (in addition to the amount determined under paragraph (4) for the remaining bank and subject to the maximum amount applicable with respect to the remaining bank under paragraph (2) at the time of such determination) on behalf of the bank the amount determined under subparagraph (B);

(ii) the Secretary shall require the bank to subsequently reimburse the remaining banks in the manner described in subparagraph (C); and

(iii) the requirements contained in subparagraphs (D) and (E) relating to the use of net earnings available for dividends shall apply to the bank until the bank has reimbursed the remaining banks for all of the excess amount.

(B) ALLOCATION OF EXCESS AMOUNT AMONG REMAINING FEDERAL HOME LOAN BANKS.—The amount each remaining Federal home loan bank shall be required to pay under subparagraph (A)(i) is the amount determined by the Secretary by multiplying the excess amount by the percentage arrived at by dividing—

(i) the amount paid to the Funding Corporation by the remaining bank at the time of such determination; by

(ii) the aggregate amount of such payments made by remaining banks at such time.

(C) REIMBURSEMENT PROCEDURE.—The bank on whose behalf a payment is made under subparagraph (A)(i) shall annually pay to each remaining bank an amount determined by the Secretary by multiplying the amount available for such payments (at the time of such determination) by the percentage determined under subparagraph (B) with respect to the remaining bank until the aggregate amount of the excess amount has been reimbursed by the bank.

(D) LIMITATION ON DIVIDENDS.—The amount of dividends which may be paid for any year by a bank on whose behalf a payment is made under subparagraph (A)(i) shall not exceed an amount equal to ¼ of the net earnings available for dividends of the bank for the year.

(E) TRANSFER TO ACCOUNT FOR REIMBURSEMENTS REQUIRED.—Of the net earnings available for dividends for any year of a bank on whose behalf a payment is made under subparagraph (A)(i), the amount necessary to make the reimbursements required under subparagraph (A)(ii) shall be placed in a reserve account (established in the manner prescribed by the Secretary) the balance in which shall be available only for such reimbursements.

(6) ADDITIONAL SOURCES.—If each Federal home loan bank has exhausted the amount applicable with respect to the bank under paragraphs (2) and (7), as calculated under paragraphs (3), (4), and (5), the amounts necessary to provide additional funding for the Funding Corporation Principal Fund shall be

obtained in the manner provided in the following subparagraphs (in the order in which such subparagraphs appear):

(A) ASSESSMENTS.—The Funding Corporation, with the approval of the Board of Directors of the Federal Deposit Insurance Corporation, shall assess against each Savings Association Insurance Fund member an assessment (in the same manner as assessments are assessed against such members by the Federal Deposit Insurance Corporation pursuant to section 7 of the Federal Deposit Insurance Act) except that—

(i) the maximum amount of the aggregate amount assessed shall be the amount of additional funds necessary to fund the Funding Corporation Principal Fund;

(ii) the sum of—

(I) the amount assessed under this paragraph; and

(II) the amount assessed by the Financing Corporation under section 21;

shall not exceed the amount authorized to be assessed against Savings Association Insurance Fund members pursuant to section 7 of the Federal Deposit Insurance Act;

(iii) the Financing Corporation shall have first priority to make the assessment; and

(iv) the amount of the applicable assessment determined under such section 7 shall be reduced by the sum described in clause (ii) of this subparagraph.

(B) RECEIVERSHIP PROCEEDS.—To the extent funds available pursuant to subparagraph (A) are insufficient to provide sufficient capital to fund the Funding Corporation Principal Fund, the Federal Deposit Insurance Corporation shall transfer to the Funding Corporation from the receivership proceeds of the FSLIC Resolution Fund the remaining amount of funds necessary for such purpose.

(7) AGGREGATE ANNUAL PRINCIPAL CONTRIBUTION OF FEDERAL HOME LOAN BANKS.—

(A) AMOUNT REQUIRED.—The sum of the amounts subject to paragraph (2)(B) that are paid by the Federal home loan banks under paragraph (1) shall, for each calendar year for which paragraph (2)(B) applies, equal—

(i) $300,000,000, in the case of a calendar year before 1993; or

(ii) the adjudicated dollar amount determined under subparagraph (B), in the case of a calendar year after 1992.

(B) ADJUSTMENT DOLLAR AMOUNT FOR YEARS AFTER 1992.—

(i) IN GENERAL.—The adjudicated dollar amount under subparagraph (A)(ii) for any calendar year shall be the sum of—

(I) $300,000,000; and

(II) an amount equal to $300,000,000 multiplied by the inflation adjustment determined under clause (ii).

(ii) INFLATION ADJUSTMENT.—For purposes of clause (i), the inflation adjustment of any calendar year is the percentage (if any) by which—

(I) the consumer price index for the preceding calendar year; exceeds

(II) the consumer price index for calendar year 1991.

(iii) CONSUMER PRICE INDEX.—For purposes of clause (ii), the consumer price index for any calendar year is the average, as of the close of such year, of the last consumer price index for all-urban consumers published by the Department of Labor.

(f) OBLIGATIONS OF FUNDING CORPORATION—

(1) ISSUANCE TO SECRETARY—

(A) IN GENERAL.—The Funding Corporation may issue bonds notes, debentures, and similar obligations to the Secretary, in an aggregate amount not to exceed $50,000,000,000. No obligation may be issued under this paragraph unless, at the time of issuance, the face amounts (the amount of principal payable at maturity) of noninterest bearing instruments in the Funding Corporation Principal fund are equal to the aggregate amount of principal on the obligations of the Funding Corporation that will be outstanding following such issuance.

(B) TERMS AND CONDITIONS OF PURCHASE.—The Secretary shall purchase each obligation issued under this paragraph upon terms and conditions established by the Secretary. Each such obligation shall bear interest at a rate determined by the Secretary, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity.

(2) INTEREST PAYMENTS.—The Funding Corporation shall pay the interest due on (and any redemption premium with respect to) such obligations from funds obtained for such interest payments in the manner provided in the following subparagraphs (in the order in which such subparagraphs appear):

(A) EARNINGS ON CERTAIN ASSETS.—All earnings on assets (of the Funding Corporation) which—

(i) are described in subsection (g)(1); and

(ii) are not invested pursuant to subsection (g)(2);

shall be used to make interest payments on Funding Corporation obligations when interest is due.

(B) PROCEEDS OF RTC.—The Resolution Trust Corporation shall pay to the Funding Corporation—

(i) the net proceeds received by the Resolution Trust Corporation from the liquidation of institutions under the management of the Corporation pursuant to section 21A to the extent the amount of such proceeds are determined by the Oversight Board to be in excess of the amount of funds necessary for resolution costs in the short-term period following the date of such determination; and

(ii) any proceeds from warrants and participants of the Resolution Trust Corporation.

(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—To the extent the funds available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, the Federal home loan banks shall pay to the Funding Corporation—

(i) an aggregate annual amount equal to—

(I) $300,000,000, in case of a calendar year before 1993, or

(II) the adjusted dollar amount determined under subsection (e)(7)(B), in the case of a calendar year after 1992; minus

(ii) the sum of—

(I) the aggregate amount paid by such banks to the Financing Corporation pursuant to section 21 during the year; and

(II) the aggregate amount paid by such banks to the Funding Corporation pursuant to subsection (e) during the year;

with the individual share of each bank to be determined pursuant to the formulation and limitations of paragraphs (2) through (5) of subsection (e).

(D) ASSETS OF RTC.—Upon the dissolution of the Resolution Trust Corporation, the net proceeds from all assets of such corporation shall be transferred to the Funding Corporation for payment of interest under this paragraph.

(E) TREASURY BACKUP.—

(i) IN GENERAL.—Notwithstanding any other provision of this Act, if the Secretary determines that the Funding Corporation is unable to pay the interest on any obligation issued under this subsection from the sources of funds under the preceding subparagraphs of this paragraph, the Secretary shall pay, out of any funds appropriated for such purpose, to the Funding Corporation the additional amount due, which shall be used by the Funding Corporation to pay such interest.

(ii) LIABILITY OF FUNDING CORPORATION.—In each such instance where the Secretary is required to make a payment under this paragraph to the Funding Corporation, the amount of the payment shall become a liability of the Funding Corporation to be repaid to the Secretary upon dissolution of the Funding Corporation (to the extent the Funding Corporation may have any remaining assets).

(iii) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary, for fiscal year 1989 and each fiscal year thereafter, such sums as may be necessary to carry out clause (i).

(3) PRINCIPAL PAYMENTS.—On maturity of an obligation issued under this subsection, the obligation shall be repaid by the Funding Corporation from the liquidation of noninterest bearing instruments held in the Funding Corporation Principal Fund.

(4) PROCEEDS TO BE TRANSFERRED TO RESOLUTION TRUST CORPORATION.—Subject to terms and conditions approved by the

Secretary, the proceeds of any obligation issued by the Funding Corporation shall be used to—

(A) transfer amounts to the Resolution Trust Corproation under section 21A; or

(B) refund any previously issued obligation the proceeds of which were transferred in the manner described in subparagraph (A).

(g) USE AND DISPOSITION OF ASSETS OF FUNDING CORPORATION NOT TRANSFERRED TO RESOLUTION TRUST CORPORATION.—

(1) IN GENERAL.—Subject to regulations, restrictions, and limitations prescribed by the Secretary, assets of the Funding Corporation which are not required to be transferred to the Resolution Trust Corporation under section 21A and are not needed for current interest payments shall be invested in direct obligations of the United States issued by the Secretary.

(2) SEPARATE ACCOUNT FOR ZERO COUPON INSTRUMENTS HELD TO ENSURE PAYMENT OF PRINCIPAL.—

(A) IN GENERAL.—The Funding Corporation shall invest amounts received prusuant to subsection (e) in, and hold in a separate account to be known as the Funding Corporation Principal Fund, noninterest bearing instruments—

(i) which are direct obligations of the United States issued by the Secretary; and

(ii) the total of the face amounts (the amount of principal payable at maturity) of which is approximately equal to the aggregate amount of principal on the obligations of the Funding Corporation.

(B) PREVENTION OF DOUBLE COUNTING AGAINST PUBLIC DEBT LIMIT.—Noninterest bearing instruments purchased by the Funding Corporation under subparagraph (A) shall not be taken into account for purposes of determining compliance with the public debt limit under section 3101(b) of title 31, United States Code.

(h) MISCELLANEOUS PROVISIONS.—

(1) JURISDICTION AND POWER TO REMOVE.—

(A) FEDERAL COURT JURISDICTION.—Notwithstanding any other provision of law, any civil action, suit, or proceeding to which the Funding Corporation is a party shall be deemed to arise under the laws of the United States.

(B) REMOVAL.—The Funding Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States District Court for the District of Columbia.

(2) IMPOSITION OF LIEN FOR FAILURE TO MAKE PAYMENTS.—

(A) IN GENERAL.—If any entity fails to make a payment required to be paid to the Funding Corporation under this section within 10 days after demand for such payment, then there shall be a lien in favor of the Funding Corporation equal to the amount not paid upon all property and rights to property, whether real or personal, belonging to such entity.

(B) APPLICABLE RULES.—Any amount with respect to which a lien is imposed by subparagraph (A) shall be treated as taxes due and owing the United States, and rules

similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement Income Security Act of 1974 shall apply with respect to a lien imposed by subparagraph (A) and the amount with respect to such lien.

(i) ANNUAL REPORT.—

(1) IN GENERAL.—The Secretary shall annually submit a full report of the operations, activities, budget, receipts, and expenditures of the Funding Corporation for the preceding 12-month period.

(2) CONTENTS.—The report required under paragraph (1) shall include—

(A) audited statements and any information necessary to make known the financial condition and operations of the Funding Corporation in accordance with generally accepted accounting principles;

(B) the financial operating plans and forecasts (including estimates of actual and future spending, and estimates of actual and future cash obligations) of the Funding Corporation taking into account its financial commitments, guarantees, and other contingent liabilities; and

(C) the results of the annual audit of the financial transactions of the Funding Corporation conducted by the Comptroller General pursuant to section 9105(a) of title 31, United States Code.

(3) SUBMISSION TO CONGRESS AND PRESIDENT.—The Secretary shall submit each annual report required under this subsection to the Congress and the President as soon as practicable after the end of the calendar year for which the report is made, but not later than June 30 of the year following such calendar year.

(j) TERMINATION OF FUNDING CORPORATION.—

(1) IN GENERAL.—The Funding Corporation shall be dissolved, as soon as practicable, after the maturity and full payment of all obligations issued by the Funding Corporation under this section.

(2) AUTHORITY OF SECRETARY TO CONCLUDE AFFAIRS OF FUNDING CORPORATION.—Effective on the date of the dissolution of the Funding Corporation under paragraph (1), the Secretary may exercise on behalf of the Funding Corporation any power of the Funding Corporation which the Secretary determines to be necessary to settle and conclude the affairs of the Funding Corporation.

(k) DEFINITIONS.—For purposes of this section:

(1) ADMINISTRATIVE EXPENSES.—The term "administrative expenses" does not include any interest on (and any redemption premium with respect to) any obligation of the Funding Corporation.

(2) FUNDING CORPORATION.—The term "Funding Corporation" means the Resolution Funding Corporation established in subsection(b).

(3) FUNDING CORPORATION PRINCIPAL FUND.—The term "Funding Corporation Principal Fund" means the separate account established under subsection (g)(2).

(4) ISSUANCE COSTS.—The term "issuance costs" means issuance fees and commissions incurred by the Secretary in connec-

tion with the issuance or servicing of any obligation under chapter 31 of title 31, United States Code, the proceeds of which are used to purchase obligations of the Funding Corporation, as determined by the Secretary in accordance with procedures established by regulation.

(5) NET EARNINGS AVAILABLE FOR DIVIDENDS.—The term "net earnings available for dividends" means the net earnings of a Federal home loan bank for any period as computed after reducing the amount of earnings for such period by the amount required to be carried (for such period) to reserves maintained by the bank pursuant to the reserve requirements contained in section 16.

(6) OVERSIGHT BOARD.—The term "Oversight Board" means—

(A) the Oversight Board of the Resolution Trust Corporation; and

(B) after the termination of the Resolution Trust Corporation, the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, the Attorney General, the Secretary of Housing and Urban Development, and the Chairperson of the Federal Deposit Insurance Corporation.

(7) RESERVE REQUIREMENTS CONTAINED IN SECTION 16.—The term "reserve requirements contained in section 16" means—

(A) with respect to the period ending on the day before the date of the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the first 2 sentences of section 16; and

(B) with respect to the period beginning on such date of enactment, the reserve requirements contained in secton 16(a).

(8) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(9) UNDIVIDED PROFITS.—The term "undivided profits" means retained earnings minus the sum of—

(A) the portion required to be added to reserves maintained pursuant to the reserve requirements contained in section 16; and

(B) the dollar amounts held by the respective Federal home loan banks in special dividend stabilization reserves on December 31, 1985, as determined by the table set forth in section 21(d)(7).

(l) REGULATIONS.—The Secretary may prescribe any regulations necessary to carry out this section.

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TITLE 31, UNITED STATES CODE

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Subtitle VI—Miscellaneous

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CHAPTER 91—GOVERNMENT CORPORATIONS

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§ 9101. Definitions

In this chapter—

(1) "Government corporation" means a mixed-ownership Government corporation and a wholly owned Government corporation.

(2) "mixed-Ownership Government corporation" means—

(A) Amtrak.

(B) the Central Bank for Cooperatives.

(C) the Federal Deposit Insurance Corporation.

(D) the Federal Home Loan Banks.

(E) the Federal Intermediate Credit Banks.

(F) the Federal Land Banks.

(G) the National Credit Union Administration Central Liquidity Facility.

(H) the Regional Banks for Cooperatives.

(I) the Rural Telephone Bank when the ownership, control, and operational of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)).

(J) the United States Railway Association.

(K) The Financing Corporation.

[(L) the Resolution Funding Corporation.]

(3) "wholly owned Government corporation" means—

(A) the Commodity Credit Corporation.

(B) the Export-Import Bank of the United States.

(C) the Federal Crop Insurance Corporation.

(D) Federal Prison Industries, Incorporated.

(F) the Government National Mortgage Association.

(G) the Overseas Private Investment Corporation.

(H) the Pennsylvania Avenue Development Corporation.

(I) the Pension Benefit Guaranty Corporation.

(J) the Rural Telephone Bank until the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)).

(K) the Saint Lawrence Seaway Development Corporation.

(L) the Secretary of Housing and Urban Development when carrying out duties and powers related to the Federal Housing Administration Fund.

(M) the Tennessee Valley Authority.

(N) the Resolution Trust Corporation.

(O) the Resolution Funding Corporation.

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§ 9105. Audits

(a)(1) Under regulations of the Comptroller General, the Comptroller General shall audit financial transactions of—

(A) wholly owned Government corporations; and

(B) mixed-ownership Government corporations during periods in which capital of the United States Government is invested in a mixed-ownership Government corporation.

(2) The Comptroller General shall audit each Government corporation at least once every 3 years. The Comptroller General shall audit the Resolution Trust Corporation, *Resolution* Funding Corporation and Federal home loan banks on a calendar year basis.

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